INSERT TAB 100

ADMINISTRATION

How to Use the Handbook

The Compliance Activities Handbook is a "how to" manual for OTS personnel involved in the conduct of compliance examinations. It focuses primarily on examination objectives and procedures with some coverage of the supervisory aspects of the regulatory process. The Handbook provides regulatory personnel with uniform standards for planning and conducting examinations. It can be used not only as a guide to national policy and procedure, but as a reference tool, and a training aid.

Through the compliance examination process, regulatory personnel assess how well a savings association manages compliance with a number of consumer protection laws and regulations such as the Truth in Lending Act and the Equal Credit Opportunity Act, and a number of public-interest related laws and regulations such as the Community Reinvestment Act and the Bank Secrecy Act. The results of the examination are reported by the Regional offices to the board of directors of an association. The examination report points out the strengths and weaknesses of an association's compliance effort and seeks the correction of any cited violations or operational flaws.

A failure to comply, or have an internal process to promote compliance, can create not only monetary problems for an association, but expose it to costly civil or criminal liability, litigation, and a loss of goodwill. A failure to have a satisfactory or better Community Reinvestment Act performance record can create problems for an association seeking to expand its operations through a merger or acquisition.

Use of the Compliance Activities Handbook should be supplemented by the reader's education, experience and judgment. Updates to the Handbook will be published and distributed periodically. Separate Handbooks are also available covering Thrift Activities, Holding Companies, Trust Activities, Information Technology, and Application Processing.

Handbook Organization: Chapters

The Handbook is organized in five segments with chapters covering: the administrative aspects of the compliance examination process; the fair lending laws and regulations such as the Equal Credit Opportunity Act, and the Fair Housing Act; the consumer protection laws and regulations such as the Electronic Funds Transfer Act and Expedited Funds Availability Act; the compliance laws and regulations such as the Bank Secrecy Act and the Bank Protection Act; and the Community Reinvestment Act and regulations.

100 Administration: This chapter covers the basics of the compliance examination process including examination planning, scoping, conduct and report writing standards.

200 Fair Lending: The fair lending chapter covers the four laws and regulations that directly relate to prohibited discriminatory lending practices. The contents range from the OTS's nondiscrimination regulations to the Home Mortgage Disclosure Act.

300 Consumer Affairs Laws and Regulations: This chapter covers the traditional consumer affairs laws and regulations such as the Truth in Lending Act, the Electronic Fund Transfer Act, the Real Estate Settlement Procedures Act the Truth in Savings Act and Electronic Banking.

400 Compliance Laws and Regulations: The compliance laws and regulations encompass, among other things, the Bank Secrecy Act, the economic sanctions laws administered by the U.S. Treasury and the Equal Employment Opportunity Act.

500 Community Reinvestment Act: This chapter covers the revised CRA regulations and examination procedures.

Chapter Organization: Sections

Within each chapter, examination materials are subdivided into sections by subject matter. A sec-

tion represents an area of association activity to be reviewed. Each Handbook chapter contains several sections. To allow for easy identification and tracking of materials, each Handbook section has a unique number. For example, within the Fair Lending Chapter 200, the Equal Credit Opportunity Act has been designated as Section 205.

A section supplies the reader with specific information on a particular phase of the examination process or a particular law or regulation. Each Handbook section covering laws or regulations includes introductory background on the law or regulation, examination objectives, examination procedures and references. In some cases, a section might include appendices or exhibits, as applicable.

Introduction: The introduction provides the reader with basic information and pertinent background material on the topic. While specific, the introductory material on the laws and regulations is not meant to be a substitute for the legislation itself. It is designed as a quick reference tool to refresh the reader's familiarity with the law or regulation being discussed. The reader should always consult the applicable law or regulation when researching a question.

Examination Objectives: Each section in chapters 200, 300, 400 and 500 includes examination objectives. They identify the goals toward which the examiner is striving in conducting a review of the subject area. The reader will find that certain objectives are germane to the overall examination process and to virtually every examination section. For instance, two objectives common to the compliance examination process are whether the association has procedures in place designed to assure compliance with a certain law or regulation, and whether those procedures are effective in facilitating compliance.

Examination Procedures: Each section in chapters 200, 300, 400 and 500 includes examination procedures. The procedures are to be used to achieve the examination objectives for each subject area. Although circumstances may dictate some variation, the procedures are arranged in a logical order to lead the examiner to conclusions as efficiently as possible.

References: Each section covering a law or regulation includes a subsection on references. Pertinent legislative and regulatory citations appear in this section as well as references to other relevant issuances.

FFIEC-Approved Procedures

In many instances, the reader will notice that the Federal Financial Institutions Examination Council logo and approval appears at the bottom of the first page of a section addressing a law or regulation. This is to indicate that the entire section, including the examination objectives and procedures, has been approved for use by all the agencies represented on the FFIEC (the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, OTS and National Credit Union Administration).

Introduction

The Office of Thrift Supervision established a specialized examination program for compliance matters in January 1989. Separate examinations for compliance matters are conducted by a specialized, dedicated, career-professional examination force. The significant features of this program are discussed below. This program reinforces the importance that OTS places on the compliance area and strengthens its overall approach to examination and supervision of saving associations.

Significant Features of the Specialized Program

Generally, the significant features of the examination program involve the use of specially-trained examination personnel who conduct separate compliance examinations. The OTS provides these personnel with a specialized training program. Separate reports of examination are presented to an association's board of directors. The OTS uses separate rating systems to evaluate an association's compliance and CRA performance. The rating systems provide a mechanism to trigger the frequency of subsequent examinations.

Handbook

The Compliance Activities Handbook, which is part of the Regulatory Handbook Series, embodies the written principles and procedures of this new program. In addition to providing materials relevant to the conduct of examinations, the Handbook has a larger role as an educational centerpiece for both examiners and associations.

Training

Each Region has a staff of specialists whose primary responsibility is the conduct of compliance examinations.

Examination personnel involved in the specialized program receive training both in the rudiments of the laws and regulations and in examination approach and philosophy. OTS sponsors periodic two-week basic schools for compliance matters. Topical seminars are conducted periodically as important issues arise.

Examination Conduct

Specialized compliance examinations are conducted using a "top-down/risk-focused" examination approach. This approach both shifts the examination focus away from individual transactions, to a broad based review of internal policies, procedures, and review programs and to areas of greatest risk. This review is supplemented by an evaluation of the integrity of these internal systems through hypothesis testing using judgmental sampling. This approach is detailed in this Handbook.

Reports of Examination

Separate reports to an association's board of directors are prepared for examinations conducted under this specialized program. These reports are comprehensive in nature and detail examination findings in a narrative format that gives the reader a thorough analysis of the integrity of the association's systems and their strengths and weak-nesses. These reports are signed by the person who led the specialized examination.

Ratings

In connection with compliance examinations, examiners will assign two ratings to the association — one for compliance itself, and one for CRA performance.

Examination Frequency

The frequency of examinations is primarily dependent upon the ratings assigned at the previous examination. The lower the ratings, the more frequently the association is to be examined, thus assuring that examination resources are directed

to those associations that are in most need of examination and supervisory attention.

For example, "1" and "2" rated associations with satisfactory or better CRA performance receive regular examinations on a 24- to 36-month interval. Associations rated "3" and "4" or those with a "Needs to Improve" CRA rating receive regular examinations on a 12- to 18-month interval. Those rated "5" or those with a CRA rating of "Substantial Noncompliance" should receive a regular examination on a 6- to 12-month interval, as deemed appropriate.

Note: Section 712 of the Gramm-Leach-Bliley Act provides for an extended CRA examination cycle for institutions with aggregate assets of not more than $250,000,000. This recent change in the law is not reflected in the frequency schedule contained in the handbook. When OTS determines how it will implement this statutory section, we will issue revisions to the handbook schedule. In the meanwhile, if you have any questions about the examination schedule applicable to your savings association, please contact your OTS regional office.

Concurrent Examinations

To the extent practicable, examinations under this specialized program are conducted concurrently with safety and soundness examinations. In situations where concurrent examinations are conducted, the interval between examinations is to be driven by the lowest rating assigned. For example, if an association receives a "2" CAMELS rating and a "5" compliance rating at a concurrent examination, according to the frequency schedule, the next examination would be conducted in six to 12 months, the interval that corresponds to a "5" compliance rating. Consequently, since a Region would not need to conduct another safety and soundness examination at that time, the compliance examination should be conducted separately. When concurrent examinations are conducted, the separate examination reports can be sent under a single cover letter. Use of a Supervisory letter is optional.

Introduction

The purpose and goal of a compliance examination is to determine the extent and effectiveness of a savings association's management efforts toward assuring compliance with laws and regulations, and maintaining a solid, operational and viable internal compliance program.

Compliance examinations are to be conducted using a "top-down/risk-focused" approach. This approach, which is also used to perform safety and soundness examinations, places emphasis on a savings association's demonstrated ability to manage its compliance responsibilities. In performing this approach, consideration is given to the savings association as a whole, taking into account all operations conducted, however legally structured. This means focusing on the association's compliance program for performing regular oversight and monitoring of its own activities, as well as those activities conducted through affiliated organizations or third party vendors. Activities conducted through an affiliate, subordinate organization or third party vendor, present varied risks to a savings association that warrant regular oversight.

The deployment of the "top-down/risk-focused" approach generally involves the comprehensive review and analysis of internal policies, procedures, and review programs as a basis for assessing compliance with the consumer protection and public interest laws and regulations, particularly those that fall within high-risk and high sensitivity areas. Additionally, applying this approach means the examiner determines whether an association's risk management systems and controls are implemented in a manner that leaves no subsidiary, affiliate, or third party service vendor outside of its compliance monitoring scope. After formulating an initial assessment of an association's overall compliance efforts from a comprehensive review of policies and the like, the examiner tests the integrity of the internal compliance program through limited sampling of various selected transactions on a risk-basis. The examiner evaluates compliance generally by focusing on high profile areas and limits the review of other laws and regulations to the extent necessary to evaluate the compliance posture of the association.

The approach presumes that formal enforcement actions will be taken when examiners encounter unsatisfactory compliance programs or otherwise severe instances of noncompliance with laws and regulations. Without this concomitant enforcement, the top-down and risk-focused approaches loses effectiveness and meaning and associations will continue to look to the examiner as its primary means of determining whether it is in compliance. It is incumbent upon management to demonstrate that it has incorporated compliance into its daily operations.

Moreover, given that the agency's limited compliance resources must be used efficiently, examinations of savings associations that have not developed viable compliance programs should generally be promptly terminated after a meeting with senior management or the board of directors is held to notify them of their inadequate program, that the examination is being terminated and rescheduled. A reasonable but short period of time should be given to institute appropriate procedures and be informed that if a compliance program is not in place by the next examination that enforcement action may be initiated. This decision should be followed-up with a strong, written communication from Regional management that stresses the importance of an internal compliance program. Typically, the termination of an examination will be generally applicable to, and was primarily designed for, those associations undergoing their first separate compliance examination.

Examination Overview

The compliance examination process is intended to be risk-focused and to clearly place the responsibility for having an acceptable compliance program with the board of directors and management. Because of the nature of the compliance subject matter, it is extremely difficult to make value judgments to render a particular legal requirement within a regulation more or less important than another requirement in the same regulation. It is possible, however, to focus ex-

sible, however, to focus examination efforts on particular aspects of a given law and reach a supportable conclusion about compliance with that law without looking at every conceivable requirement.

Although the procedures for each compliance law and regulation cover all legal requirements, not all associations will be subject to every provision of a compliance law or regulation by virtue of differences in product and service offerings. Consequently, many of the procedures for certain requirements will not be applicable to a given association. The objectives of including all requirements in the procedures are to provide detailed guidance to examiners and to assure that sufficient information is presented to assist in the testing of individual transactions and disclosures for compliance and consistency with written and articulated practices.

The "top-down" approach, as augmented by the risk-based review as defined herein, enables the examiner to take a systematic, reasoned approach to the conduct of an examination, while at the same time streamlining the process for purposes of efficiency and effectiveness. It moves the entire examination process away from one in which a review of transactions in all areas forms the basis of the examination to one in which a review of policies and procedures are used to pinpoint areas of weakness for further, more exacting study.

Pre-examination Analysis and Scoping

The pre-examination review and analysis process involves the review of information from all available sources including the association and Regional records. This review and analysis should be broad enough to obtain an understanding of the organizational structure of the association, its related activities, and risks associated with each of its activities. Further, the review is necessary to determine whether association management identifies, understands, and adequately controls the entire spectrum of risks facing the association. In general, management is expected to have a clearly defined system of risk management controls embracing all areas of operations, including those activities conducted by affiliates, subordinate organizations or third party vendors.

This pre-examination review and analysis should generally be conducted off-site by the Examiner-in-Charge sufficiently before the start of the examination to help ensure that the items of highest risk have been identified.

Prior to the beginning of an examination, the association should be sent a Preliminary Examination Response Kit (PERK) for Compliance. The PERK asks for information on the association's policies, procedures, practices, copies of blank forms, CRA comments, and other salient data. In addition, each Regional office has a wealth of information about the association in its records such as prior compliance and safety and soundness examination reports, Thrift Financial Reports, aggregate Home Mortgage Disclosure Act data, consumer complaints, and other supervisory correspondence and enforcement actions. Pertinent information should be reviewed prior to the on-site portion of the examination to assure that the examination is conducted in an effective and efficient manner.

On-site Examination

During the on-site portion of the examination, the examiner conducts detailed interviews and discussions with the Compliance Officer, Senior Management and the Internal Auditor, as applicable. This interview process helps the examiner document how management of the association views compliance and incorporates it into daily operations. Information from the interview process should be used to amend the scope of the examination if necessary by better identifying, which aspects of which laws need to be reviewed in more depth.

Examiners should review and evaluate an association's written compliance policies, written operating policies such as loan underwriting guidelines, the quality of the compliance program as measured by the depth of management involvement and commitment, the findings of internal or external reviews, the degree to which the association has corrected violations and procedural deficiencies identified as a result of these reviews or the previous examination and the materials requested prior to the examination.

The review of internal policies and procedures really encompasses two levels of analysis. The first

is whether there is, or should be, a policy or procedure in place to address a recommended or required topic. The second is an analysis of the content of the policy or procedure itself. For example, a written loan policy should be looked at to determine the types of credits that are being offered by the association, and, at the same time, should be reviewed to determine that it does not contain any discriminatory overtones inconsistent with applicable legal requirements.

A review of this material places the examiner in the position to formulate hypotheses about the association's overall compliance performance for testing. There are no restrictions on the number or extent of these hypotheses, and their composition will vary among associations. However, the examiner's preliminary assessment of an association's performance will probably fall into one of three main categories. The examiner should have either a favorable or unfavorable impression, or an uncertain belief about the association's performance in any one or a number of areas.

As a cautionary note, the examiner should keep in mind that a good public relations effort can mask serious regulatory or programmatical flaws and that the integrity of a seemingly successful program still needs to be evaluated. On the other hand, despite the absence of a cohesive compliance effort, or in instances where a fragmented or departmentalized compliance approach is used by an association, it is possible that few regulatory violations will be noted.

Review of Regulatory Areas

Each of the compliance laws and regulations can be sorted into either a Core Group or a Sensitivity-Based Selection Group.

Core Group

Laws and regulations in the Core Group are as follows:

Fair Lending

12 CFR 528 - Nondiscrimination
Regulation B (discrimination issues only)
Fair Housing Act
Home Mortgage Disclosure Act

Community Reinvestment Act

Regulation Z (calculation aspects only)
OTS Mortgage Regulations (notifications and accuracy of adjustments only)

Bank Secrecy Act

All applicable procedures in the Handbook sections for these Core Group laws and regulations (or specific aspects of these laws and regulations as noted above) will be conducted at every regular compliance examination. Testing for compliance should be entirely judgmental and statistical sampling should not be used as a matter of course.

Sensitivity-Based Selection Group

All other laws and regulations (as well as those other aspects of Regulations B, Z, or the OTS Mortgage Regulations not included in the Core group) fall into the Sensitivity-Based Selection Group. Factors to consider in making the selection of laws for review are the length of time since the last review for compliance with a particular law or regulation, the extent of any current sensitive issues associated with aspects of the laws, and any other information or findings by the examiner. Advisories from the Washington office on areas of high sensitivity will be issued periodically. Each Regional office is also encouraged to ask their examiners to include in their scope matters of known local concern. Examiners are given flexibility in making this selection, but must exercise good judgment.

It must be recognized that not every law and regulation in this grouping is going to be reviewed at every compliance examination. Given that the focus of the compliance examination is on the association's management and not on individual laws and regulations, evaluating an overall compliance performance level can be done without looking at every law and regulation. Moreover, complete reviews for those laws and regulations selected will

be the rare case - the focus should be on various aspects of those laws depending on the known weaknesses of the association, areas where other associations have experienced problems, aspects of laws and regulations that have changed significantly since the last examination, and any new laws or regulations. In no event, however, should two regular compliance examinations take place for which a particular law is entirely omitted.

The purpose of this stage of the examination process is to test the integrity of management's program while focusing on "sensitive" or "risk-prone" areas. These areas will change from one examination to the next. More importantly, the exclusion of these laws and regulations from the scope of the examination is not optional or discretionary. The idea is to focus the examiner's energies on important, sensitive subjects and to minimize the time spent on areas where the likelihood of problems is small.

After the selected regulatory areas have been reviewed, the examiner is in the position to summarize findings and reach a conclusion as to the compliance and CRA performance level of the association. The examiner should have enough information at this point to assign ratings to the association.

Once the findings have been summarized and documented, the examiner should have a final closing meeting with management of the association. The meeting should be attended by the managing officer of the association, the compliance officer, the internal auditor, and any other personnel that management would like to have attend. The findings of the examination should be discussed and corrective measures should be elicited from management.

Based on the severity of the deficiencies, the examiner should determine whether a Board of Director's meeting should be called to discuss the examination findings. In situations involving 3, 4, and 5 compliance ratings or Needs to Improve and Substantial Noncompliance CRA ratings, the normal practice is to have such a meeting.

Examination Types

There are three types of compliance examinations: regular examinations; targeted examinations; and special examinations. These are identified in the Compliance EDS as types 60, 61, and 62, respectively.

A *regular examination* is an examination of an association in which all necessary and applicable regulatory procedures are performed by the examiner. The regular examination is triggered by the association's rating at its previous examination and conducted in accordance with the frequency schedule explained in this section. An association is always assigned ratings for compliance and CRA performance at a regular examination.

A *targeted examination* is an examination conducted to address action taken by management to correct items of concern noted at the most recent examination, including a review of any new activities of an association that are subject to the laws and regulations normally considered during a regular examination and determining the degree of compliance with any supervisory directives or more formal enforcement actions. No compliance rating is assigned. No CRA rating is assigned, and no public CRA Performance Evaluation is prepared. If the targeted examination discloses serious new deficiencies, or a general decline in performance, then the targeted examination should be discontinued and a regular examination should be commenced.

A *special examination* is an examination conducted in response to dictated circumstances. For example, should the Regional Office receive a consumer complaint alleging discrimination whose disposition would necessitate an on-site investigation of the association, a special examination should be conducted. Other circumstances can occur that may trigger a special examination. One example is when regular examination findings indicate activities conducted on behalf of the savings association by a functionally regulated entity (excluding thrift holding companies) pose a material risk to the savings association and association management is deficient in monitoring these activities. Under this scenario, regular examination findings/concerns relating to the functionally regulated

entity's activities must be thoroughly documented, and discussed with Regional Office Counsel and the Assistant Regional Director. Additionally, consult the latest Agency guidance regarding examining functionally regulated entities. Subsequently, a determination will be made on whether to commence a special examination of the functionally regulated entity in accordance with the requirements of the Gramm-Leach-Bliley Act. If a decision is made to conduct a special examination of a functionally regulated entity, it must be coordinated with the entity's primary regulator.

An association cannot be assigned new ratings as a result of any special examination.

Frequency Schedule

Section 712 of the Gramm-Leach-Bliley Act ("GLBA") provides for an extended CRA examination cycle for institutions with aggregate assets of not more than $250 million. An association will be considered within the $250 million asset limit provided its year-end assets do not exceed $250 million for two consecutive calendar year-ends. A thrift qualifying for extended cycle treatment will have a CRA public evaluation performed after 48 months if its last CRA rating was Satisfactory, or after 60 months if its last CRA rating was Outstanding. A thrift receiving extended cycle treatment for CRA purposes will have "compliance only" exams scheduled on or about the midpoint of the CRA cycle if the institution is 1 or 2 rated. If the institution is rated 3 or worse for compliance at any exam, a subsequent compliance examination will be conducted in accordance with the normal schedule.

Under Section 712 of GLBA, OTS may conduct a CRA public evaluation of an association within a period less than the extended interval when it has reasonable cause. Reasonable cause may be based on consideration of the following factors: a material change in the size of the geographic area of the retail market served by the institution; a substantial decrease in lending volume; merger or acquisition of the thrift; a substantial alteration of the credit product mix offered by the thrift; identification of discriminatory or other illegal credit practices; or the presence of consumer complaints or community comments that reflect significant deterioration of CRA performance. A region should consult with Compliance Policy when evaluating whether the factors considered are sufficient to warrant a reasonable cause examination.

An association should receive regular examinations based on the lowest rating (compliance and CRA) assigned at its last regular examination. The following frequency guidelines are designed to concentrate resources on those associations whose performance is less than satisfactory for either compliance or CRA. Intervals are defined in relation to the examination report transmittal date of the previous examination. If wide differences exist between the CRA and compliance ratings, an examination focusing on the lower rated area only may be conducted. However, the Regional Office should discuss the matter with Compliance Policy before the scope of any regular examination is significantly limited.

Associations assigned the following ratings should receive regular examinations based on the following monthly intervals:

Compliance	CRA	Frequency
1	Outstanding or Satisfactory	24 to 36
2	Outstanding or Satisfactory	24 to 36
1 or 2	Needs to Improve	12 to 18
3 or 4	Outstanding or Satisfactory	12 to 18
3 or 4	Needs to Improve	12 to 18

Compliance	CRA	Frequency
5	Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance	6 to 12
1, 2, 3, or 4	Substantial Noncompliance	6 to 12

These intervals provide a range within which a compliance examination for an institution must be

scheduled. For example, the next compliance examination of an institution with a compliance rating of "2" and a CRA rating of "Satisfactory" should be scheduled for as soon after 24 months as possible.

The Regional offices may conduct regular examinations on a shorter cycle or supplement regular examinations with targeted examinations, should resources permit or circumstances warrant. However, in scheduling examinations it should be remembered that associations most recently rated in the "3," "4," or "5" categories for compliance or in the Needs to Improve or Substantial Noncompliance categories for CRA are in need of more than normal examination attention. Consequently, the scheduling of regular examinations of these associations should be considered before conducting more frequent examinations of satisfactorily performing associations.

De Novo Institutions

Characteristics of de novo institutions may vary since some may be affiliated with established institutions or their holding companies, thus having operating procedures, and some may be beginning operations from the ground up, thus not having any organizational structure or operating procedures. These characteristics should be considered in determining the region's compliance oversight for a particular institution.

Regions are encouraged to communicate the agency's expectations to management during the application process to ensure that management of the de novo institution fully comprehends its compliance and CRA responsibilities. For example, the agency's expectations can be communicated through meeting with management and by providing management with a copy of the Compliance Activities Handbook for their review.

Commitments obtained during the applications process and conditions included in the approval orders are often not included in the institution's business plan. Examiners must carefully consider these commitments and conditions when scoping on-site visits to, and compliance examinations of, de novo institutions, and consult the regional and Washington application digests and the institution's final business plan.

Regions are also encouraged to have compliance examination staff conduct an on-site field visitation to the institution within six months of the commencement of operations to review progress toward developing an effective compliance and CRA program.

An initial compliance examination of a de novo institution should be conducted within 12 months after acquisition of an existing institution or the start of operations for a new institution. A twelve-month examination cycle will continue until management has satisfied all conditions imposed at the time of approval and there are no significant supervisory concerns.

Compliance examinations of de novo institutions should be conducted concurrently with safety and soundness examinations, whenever practicable.

Affiliated Organizations

Competition in the financial services industry continues to grow encouraging savings association and other financial institutions to expand their services and products. As a result, associations have come to rely on "affiliated organizations" (subsidiaries, service corporation, other affiliates, or partnerships) and third party vendors to perform key business functions. In some instances, the association is an affiliate of a diversified holding company structure and provides banking services as an element of a larger financial operation directed at the parent company level.

Affiliated organizations or third party vendors provide savings association customers with services and products the association may be prohibited from engaging in directly or would need to develop at great expense. Having this type of distribution channel enables an association or its parent to offer products and services responsive to the diverse needs of its customers. Furthermore, this business strategy benefits both the association and its customers. However, offering products and services through affiliated organizations or third party vendors, also presents a variety of risks to the savings association. These include, but are not limited to, operational risk, consumer protection risk, counterparty risk, regulatory risk, and reputation risk. An association's failure to establish a compliance risk management program to adequately identify,

measure, monitor, and control these risks in its products and business lines is an unsound management practice.

Assuring appropriate compliance oversight of an association's operations when conducted through affiliate organizations or third party vendors, means association management must demonstrate to the examiner that its compliance risk management program is effective and encompasses association operations as a whole, however legally structured.

Association management cannot abdicate its compliance risk management responsibilities to an affiliate, subordinate organization, or third party vendor. Therefore, examinations must ensure that a savings association's compliance risk management systems and controls are implemented in a manner that reviews affiliate, subordinate organizations, third party vendors, or other forms of delivery that fulfill the institution's business plan.

Introduction

Determining the scope of a compliance examination is made easier by the routine collection and analysis of information available prior to the commencement of the examination. This section discusses the Compliance Preliminary Examination Response Kit (PERK) and identifies information available at the Regional office that should be reviewed prior to the on-site portion of the examination.

The overall objectives of this phase of the examination process are to collect and review as much information as possible prior to the examination to enable the examination team to work more efficiently when in the association and to minimize time spent during an examination waiting for data and files from the association's management and staff. Obtaining data prior to the commencement of field work gives the examiner a clearer picture about the range of the association's products and services and which laws and regulations apply to the association. From this knowledge, the examiner can better plan work assignments and have a better idea about anticipated on-site examination time. The examiner should generally perform this stage of the examination process off-site.

Compliance PERK

Preliminary Examination Response Kit (PERK)

The PERK is a request by the regional office for a collection of information that should be prepared by institution management and ready for the examiners prior to or at the commencement of an examination. This information prepared by management in advance of the examination assists OTS and the institution by:

- increasing the efficiency of the on-site examination;
- determining the scope of the examination; and
- reducing costs and workload

The OTS's PERK is designed to reduce regulatory burden, eliminate redundancies and focus requests only for the minimum information needed to conduct a risk-focused examination based on the examination scope. The collection and review of the information in the PERK should serve to minimize the time that the examination team needs to spend on-site. Therefore, it is in the best interests of an association's management to be as responsive and complete as possible in answering the PERK. The PERK is comprehensive, but is purposely designed to minimize on-site examination time and make the examination process less disruptive for the association.

Pursuant to the OTS customer service plan standards, the PERK will be sent to the institution four weeks prior to the examination start date and will include the approximate start date for the on-site examination, the examination as of date, the number of on-site staff and an estimation of the amount of time required to conduct the examination and a contact person's name and phone number.

The PERK is comprised of various documents and information requests that are listed in the Summary Schedule (PERK 001). Section 060 of the Thrift Activities Handbook provides instructions specific to each PERK document. The remainder of this subsection discusses particular aspects of the Compliance PERK, which is contained in Appendix A.

Revisions to the Compliance PERK were included in the August 1995 overall revisions. The CRA materials contained in the Compliance PERK were further revised in December 1995, November 1996 and October 1997 to incorporate the requirements of the revised CRA regulation.

The revised Compliance PERK contains a "Compliance Examination Summary Schedule," "Fair Lending Questionnaire" and "Community Reinvestment Act Information," which also includes optional supplementary schedules.

The revised CRA portion of the PERK meets several objectives. First, it organizes the information requests according to the method used to evaluate

CRA performance. For example, there is a separate information request for small institutions being evaluated under the "new" CRA regulation. Second, it incorporates the requirements of the revised regulation and examination procedures into the information requests. Third, it deletes existing information requests that were process-oriented. Fourth, it balances the examiner's need for timely information with the need to reduce or minimize unnecessary burden on examined institutions.

The revised Compliance PERK, like the existing PERKs for all examination functions, is a guide. As such, the information requests can and should be tailored to the activities of each institution and the scope of the examination.

Information Available at the Regional or Area Office

Prior to the commencement of a compliance examination, the examiner should obtain for review:

- The most recent compliance examination report
- The most recent thrift examination report
- OTS financial and monitoring reports
- The most recent audit report
- Correspondence and internal memoranda
- Documentation pertaining to supervisory and enforcement actions or CRA-related commitments
- Consumer complaints filed since the previous examination
- The most recent HMDA filing and pertinent aggregate reports
- Outside contact interview forms from prior OTS examiners or from the other agencies
- Any CRA comments filed and maintained in the public comment file at the Regional office's
- Business Plan
- Regulatory Plan

If possible, the examiner should have a discussion with the previous examiner. Also, the examiner may do some preliminary research to identify individuals in the association's community who might be contacted for CRA purposes.

Preferably, pre-examination information should be available to the examiner when he or she arrives to conduct this part of the examination. Based on a review of this information, as well as the response to the PERK, the examiner should be in a good position to identify areas of the association's operations where examination time can best be focused.

The requested information should be maintained in the workpapers. The request can be altered for future examinations by only asking for copies of any items that have changed since the last request.

Compliance Examination Summary Schedule

Preliminary Examination Response Kit

Office of Thrift Supervision

_____

Docket #

Review Period _____ through _____ _____

Institution Name

The following is a schedule of information to be made available to the examiner in charge either prior to or at the commencement of the compliance examination. The information will help ensure an efficient review of the institution and minimize additional requests; however, other information may be requested during the examination. Please provide a brief explanation for any information that is not provided, e.g., included with the safety and soundness examination requests, or indicate the name of an individual to contact to obtain the requested information.

I. GENERAL

__1. Organization chart, including the compliance officer and internal audit department reporting lines.[1]

__2. Corporate structure chart, including related organizations and affiliates.[1]

__3. Formal compliance policy and program adopted by the board of directors.

__4. Identify the compliance officer and describe duties, or identify the distribution of compliance responsibilities. Also, identify the members of any compliance, community reinvestment or audit committees.

__5. Internal/External audit reports[1] and other reviews that address compliance matters, including any self-assessments performed.

__6. Minutes of board of directors' and other meetings[1] (including internal audit committee meetings) addressing CRA, Bank Secrecy Act, and other compliance matters, that were held during the review period. Please include materials reviewed or referred to in the minutes.

__7. Real estate appraisal policy adopted by the board of directors, and appraisal manuals utilized by internal appraisers.[1]

__8. Debt collection procedures and loan modification policies adopted by the board of directors.[1]

__9. Foreclosed real estate disposition procedures and manuals.[1]

__10. Loan servicing and collection procedures and manuals.[1]

__11. Branch/Teller manuals.

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__12. Policies and procedures relating to deposit administration, including compliance with the Truth in Savings Act.

__13. Training manuals and other training information relating to compliance laws and regulations. Include a record of dates and participants, if available.

__14. List all accountholders/borrowers living outside of the United States.

__15. List all loan programs, including both open- and closed-end mortgage and consumer loan pro- grams, and current rate sheets.

__16. List third party or affiliated vendors providing compliance services.

__17. Current underwriting standards and policy, as approved by the board of directors, and publicly-available loan underwriting standards. Include information on any credit-scoring system utilized and results of any validations conducted.[1]

__18. Internal loan processing procedures relating to issuance of various loan disclosures.

__19. Mission statement and business plan, including financial projections.[1]

__20. Sample Loan Officer/Originator employment agreement, including commission schedule if applicable.[1]

__21. Internal audit procedures.[1]

__22. A listing of loans originated or purchased during the review period by type. If possible, please sort this list by MSA (or assessment area if not an MSA) for each full year and part year of the review period. The list should include the loan number (or other identifier), the dollar amount, the date originated, and, if possible, the MSA, county, or other area identifier, and the applicant's income or business/farm revenue. The loan application register may be used for residential loans; a trial balance could be used for other types of loans.

__23. Summary of new lending,[1] by month, of the number and total dollar amount of loans granted and purchased during the review period. Please separate the loans into the various types (e.g., purchase of one- to four-family, construction 5+ units, consumer installment, etc.) normally distinguished by your institution. Also, please distinguish refinance loans from purchase loans.

Note: The information requested in the preceding two paragraphs may overlap in some institutions. If an institution's reports are structured in such a way that the information may be provided in one report or response, please do so.

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__24. Describe all litigation, pending litigation, or claims, judgments, and assessments in which the institution is involved or in which it is likely to become involved.

__25. Branch closing policy adopted by the board of directors, and any information relating to closings conducted in accordance with the policy. For example, include any evaluations made by the institution regarding the community impact of any closings and any comments received from the public.

II. BANK PROTECTION ACT

__1. Identify the security officer and provide evidence of appointment by the board of directors.

__2. Security policy and program and evidence of adoption by the board of directors. Include any training records.

__3. Suspicious Activity Report (OTS Form 1601) filed in accordance with 12 CFR 563.180(d).[1]

__4. Reports of robberies or unexplained losses for which no criminal referrals were filed.

III. BANK SECRECY ACT (BSA)

__1. Identify BSA Officer and other individual(s) involved in substantial BSA activities such as daily monitoring (not including tellers).

__2. BSA policy adopted by the board of directors.

__3. BSA compliance program.

__4. Currency Transaction Report (CTR) Forms 4789 and Forms 4790 that have been filed.

IV. ELECTRONIC FUND TRANSFER ACT (EFTA)

__1. EFTA policy adopted by the board of directors.

__2. Initial disclosure statement of terms and conditions.

__3. Sample error resolution notice provided periodically to customers.

__4. Records describing any complaints received.

__5. Sample periodic statements showing electronic fund transactions.

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__6. Sample automated teller machine receipt.

IV. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

__1. EEO policy adopted by the board of directors.

__2. Any other EEO policies, including affirmative action, developed by the institution.

__3. Employment administration manuals and the employee handbook.

__4. Results of any review of employment practices or facilities access under the American Disabilities Act.

VI. EXPEDITED FUNDS AVAILABILITY ACT (EFA)

__1. EFA policy adopted by the board of directors, and procedures used to ensure compliance.

__2. EFA Disclosure Statement and sample (blank) deposit hold notices (exception, reasonable cause or case-by-case).

VII. FLOOD DISASTER PROTECTION ACT (FDPA)

__1. FDPA policies adopted by the board of directors and procedures to ensure compliance.

__2. Disclosure used to notify applicant of flood zone determinations.

VIII. HOME MORTGAGE DISCLOSURE ACT (HMDA)

__1. A list of offices where the institution's HDMA reports are available to the public.

__2. Loan application register (LAR) and LAR modified for public use.

IX. FAIR LENDING

__1. Completed Fair Lending Questionnaire (enclosed).

__2. Cosigner disclosure forms.

__3. Any fair lending/nondiscrimination policy and training records.

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X. FORMS AND DISCLOSURES

__1. All credit application forms, including applicant financial statement, for all types of credit offered by the institution.

__2. Application denial, counteroffer, approval and credit account adverse action forms.

__3. Internal application transmittal, credit evaluation and credit scoring forms.

__4. Note and security agreement forms for all loans and lines of credit. If applicable, include any consumer lease financing documents and disclosures.

__5. Segregated disclosures for closed-end credit.

__6. Itemization of amount financed forms.

__7. Initial and periodic disclosure statements for open-end credit.

__8. Any additional disclosure materials provided for credit cards, home equity lines of credit or reverse mortgages.

__9. Program disclosures for each type of ARM mortgage loan offered and the ARM informational booklet.

__10. ARM adjustment notice forms.

__11. Servicing transfer policy and three-year history disclosure statement form.

__12. Servicing transfer to/from notification forms.

__13. Initial and annual disclosure forms used for escrow accounts.

__14. Uniform Settlement Statement (Form HUD-1), Good Faith Estimate form, required provider disclosures and settlement costs informational booklet.

__15. Truth in Savings disclosures, including initial and periodic disclosures, maturity notices and sample rate sheets for all types of consumer deposit accounts available or held during the review period.

__16. Savings (passbook, certificate, NOW, MMDA) and demand deposit account agreement forms, for accounts now being offered/accepted.

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[1] This item may also be required to fulfill safety and soundness examination requirements. If a compliance examination is conducted concurrently, institution management need only provide one response.

Fair Lending Questionnaire

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Institution Name

In an effort to determine the extent of the institution's compliance with the applicable laws and regulations dealing with fair lending and employment, the managing officer is requested to provide answers to the following questions and present the completed questionnaire to the examiner in charge by the date requested in the cover letter. Please attach supplemental pages if additional space is needed. If a question is not applicable to the institution, respond with "Not applicable."

For the purpose of the questionnaire, the term, "minority group members" means American Indian, Alaskan Native, Asian, Pacific Islander, African American, Hispanic, and other minorities. As used herein, the "effective lending territory" of an institution means the geographical territory in which the institution makes a substantial majority of its loans and all other areas that are as close to the institution's offices as such areas.

1. Has the institution adopted comprehensive nondiscriminatory loan underwriting standards and business practices? If so, please describe. Are they reviewed regularly for compliance with applicable nondiscrimination and fair lending statutes and regulations? If so, what were the dates and results of the most recent review?

2. Has the board of directors reviewed, during the last twelve months, the institution's loan underwriting standards and the practices implementing them to ensure equal opportunity in lending? If yes, provide the date of the most recent review. If no, provide the name of the committee or individual to whom this responsibility has been delegated and the date of the board action delegating the responsibility for such review.

3. If deviations from the institution's underwriting standards are permitted, who has the authority to approve such variations?

4. Are there neighborhoods or areas within its effective lending territory in which the institution makes dwelling or other loans on more restrictive terms? If so, specify the areas and the reasons for such restrictions.

5. Are there neighborhoods or areas within its effective lending territory in which the institution does not make dwelling or other loans or areas where more restrictive terms are applied? If so, specify the areas and the reasons for such restrictions.

6. How does the institution ensure that lending staff has a good working knowledge of nondiscrimination/fair-lending statutes and regulations?

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7. Does the institution train (and periodically re-train) lending staff on the adopted underwriting standards? Does it provide any sensitivity training to all staff that deal with the public, particularly those who work in a multicultural environment? If so, please describe.

8. What oversight mechanisms and monitoring procedures are in place to ensure adherence to the institution's underwriting and fair lending standards?

9. What procedures are in place to prevent illegal prescreening or discouragement of written applications in connection with the processing of oral applications or inquiries?

10. Does the institution review denied loan applications under any "second look" type of program and use the reversal of decisions to train affected staff? If so, please describe.

11. Does the institution sample denied, withdrawn, and approved loan files for indications of discriminatory treatment? If so, please describe process and results.

12. Does the institution periodically analyze (as outlined in Thrift Bulletins 25 and 47-2) its lending patterns/distribution:

    By geographical location (census tract) of security property?
    By race of applicant?
    By income level of applicant?
    By any other basis?

    If so, please provide a copy of these analyses, as well as a description of any strategies or plans implemented or proposed to address any noted lending disparities or gaps.

13. Does the institution conduct self-assessments of its lending activities to ensure compliance with record-keeping and reporting requirements and adherence to internal standards? If so, please describe.

14. Has the institution assessed the effectiveness of its marketing/advertising strategies in informing all segments of its effective lending territory of credit products and financial services offered by the institution? If so, what were the conclusions including any planned initiatives for improvement?

15. Does the institution perform unannounced testing or shopping of lending staff and underwriting practices? If so, please describe.

16. Has the institution received or resolved any fair lending or fair housing complaints since the last review period? If so, please provide pertinent records.

    What procedures or processes are in place to investigate and resolve consumer complaints that allege discriminatory treatment?

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17. Does the institution offer mortgage counseling services to potential applicants, as well as problem borrowers? If so, please describe.

18. Have there been any U.S. Department of Housing and Urban Development, U.S. Department of Justice, or other state or federal regulatory/enforcement inquiries or investigations into the institution's lending or business practices during the review period? If so, please describe.

19. Has the institution adopted a comprehensive equal employment opportunity program? If so, please describe and provide a copy of any analysis of its effectiveness. If there have been any state or federal regulatory/enforcement investigations or if there are any pending charges, lawsuits, or other proceedings against the institution on equal employment issues, please describe.

_____ (Managing Officer)

_____ (Title)

_____ (Date)

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Institution Name

Introduction

Pursuant to the revised Community Reinvestment Act (CRA) regulation that became effective July 1, 1995, an institution's CRA performance may be evaluated in several ways beginning January 1, 1996:

- Small institutions (those under $250 million in total assets that are either independent or an affiliate of a holding company with combined bank and thrift assets less than $1 billion) are evaluated under the streamlined small institution procedures (see 12 CFR 563e.26). Small institutions may also wish to provide additional information for the examiner to consider in evaluating whether the institution may be eligible for an "Outstanding" CRA rating.
- Small institutions may elect to be evaluated under the lending, investment, and service tests if they have met the data collection requirements for large institutions (see 12 CFR 563e.21).
- Large institutions are evaluated under the lending, investment and service tests (see 12 CFR 563e.51(b)(4) and (c)(2), and 563e.22 through 563e.25).
- Institutions may begin submitting strategic plans for approval. Examinations based on approved strategic plans cannot take place until the institution has operated under the approved strategic plan for one year (see 12 CFR 563e.27). Up to that point, institutions with approved strategic plans will be examined under either the old regulation, the lending, investment, and service tests (if they elect), the small institution tests (if they qualify) or the community development test (if they are designated as "wholesale" or "limited purpose" institutions).

This section of the Compliance PERK contains information requests based on each of the evaluation methods described above.

The following information should be made available to the examiner-in-charge either prior to or at the commencement of the compliance examination. The information will help ensure an efficient review of the institution and minimize additional requests. Please provide a brief explanation for any information that is not provided or indicate the name of an individual to contact to obtain the requested information.

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Small Institutions

Beginning January 1, 1996, small institutions will be evaluated under the criteria contained in 12 CFR 563e.26. Completion of the following information will provide an opportunity for your institution to present its record with regard to CRA performance and will also materially aid the examiner's review of your institution's CRA activities.

Please be as specific as possible in responding to the information requests. Where appropriate, reference may be made to related documents, such as those requested in the Fair Lending Questionnaire. Please reference all attachments to the specific information requests enumerated below.

1. CRA Public File (see 12 CFR 563e.43).

2. For review periods longer than covered by the materials in the CRA Public File, any supplementary information to cover the balance of the review period and any pertinent confidential information related to the contents of the Public File.

3. A copy of the public CRA Notice.

4. Any response to the document entitled "Optional Information (Small Institutions)" (see separate guidance for the use of this document).

In addition, your institution may have compiled certain information (for example, an analysis of lending patterns or factors that may bear on your institution's loan-to-deposit ratio) that you would like the examiner-in-charge to review. If so, please provide the information in advance of the examination with your overall response to this PERK request or have it available when the examination begins.

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Large Institutions

Large institutions are examined under the lending, investment and service tests. Completion of the following information will provide an opportunity for your institution to present its record with regard to CRA performance and will also materially aid the examiner's review of your institution's CRA activities.

Information listed as optional in this request is intended to serve as a guide to the types of supplementary information regarding a large institution's performance that could be helpful in providing examiners with a greater understanding of the institution's performance and, thus, expedite the examination process. Your institution is not required to provide the information identified as optional. In addition, your institution is welcome to provide information demonstrating its performance that is not listed.

Please be as specific as possible in responding to the information requests. Where appropriate, reference may be made to related documents, such as those requested in the Fair Lending Questionnaire. Please reference all attachments to the specific information requests enumerated below.

1. CRA Public File (see 12 CFR 563e.43).

2. For review periods longer than covered by the materials in the CRA Public File, any supplementary information covering the balance of the review period and any pertinent confidential information related to the contents of the public file.

3. A copy of the public CRA notice.

Lending Test

4. The total number and dollar amount of the institution's home mortgage, small business and small farm loans originated or purchased during the review period. This includes data collected since your previous annual HMDA and CRA data submissions. We would appreciate reviewing this year-to-date information on diskette, if possible, to facilitate off-site analysis and reduce examination burden.

5. The number and dollar amount of the institution's home mortgage, small business and small farm loans originated or purchased within its assessment area(s) during the review period.

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6. For each assessment area, the total number and dollar amount of home mortgage, small business, and small farm loans originated or purchased in low-, moderate-, middle- and upper-income census tracts or BNAs (collectively referred to as "geographies").

7. For each assessment area, the total number and dollar amount of home mortgage, small business, and small farm loans (originated or purchased) to individuals of low-, moderate-, middle- and upper-income.

8. The total number and dollar amount of small business and small farm loans by:

   - Loan amount less than $100,000;
   - Loan amount between $100,000 and $250,000, inclusive;
   - Loan amount greater than $250,000; and
   - To businesses or farms with revenues of less than $1 million per year.

9. A schedule of the number and amount of community development loans made by the institution and access to information that describes the primary purpose of the loans.

10. Any information regarding the innovativeness or complexity of community development loans.

11. Any information regarding innovative or flexible loan programs targeting low- and moderate-income geographies or individuals, including the number and dollar amount of loans originated within the institution's assessment area(s).

12. (OPTIONAL) Data collected and maintained pursuant to 12 CFR 563.42(c) for each category of consumer lending that the institution wishes to have considered under the lending test.

13. (OPTIONAL) Data collected, maintained and reported pursuant to 12 CFR 563e.42 for home mortgage, small business, small farm or consumer loans made by the institution's affiliate(s) that it wishes to have considered under the lending test.

14. (OPTIONAL) Any other lending data that the institution chooses to provide, including additional distribution data or information regarding loans outstanding, commitments and letters of credit.

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Investment Test

15. A schedule of the amount and date of qualified investments, as defined in 563e.12(r), and access to any prospectus and supporting information that describes the qualified investments. Please distinguish between those qualified investments that are made in your assessment area(s) and those that are made outside the assessment area(s). For qualified investments made outside the institution's assessment area(s), please provide an explanation of how each benefits a larger statewide or regional area that includes the assessment area(s).

16. Any information regarding the innovativeness and complexity of the qualified investments listed, the degree to which these investments are not routinely provided by other private investors and their responsiveness to community development needs.

17. Information regarding the disposition of branch premises through donation, sale on favorable terms, or rent-free occupancy in a predominantly minority neighborhood to any minority- or women-owned depository institution or financial institution with a primary mission of promoting community development, if applicable.

18. (OPTIONAL) Information regarding any qualified investments provided by the institution's affiliate(s), including the dollar amount and date of such investments.

Service Test

19. The number of branches in low-, moderate-, middle- and upper-income geographies.

20. For each branch opened or closed during the review period, indicate its location by census tract, whether the census tract is low- or moderate-income and whether the branch served (if closed) or will serve (if opened) low- or moderate-income individuals.

21. A description of the institution's alternative delivery systems, if applicable, for delivering retail banking services in low- and moderate-income geographies or to low- and moderate-income individuals.

22. An explanation of any material differences in the hours of operations of, or services available at, branches located in low-, moderate-, middle- and upper-income geographies in the assessment area(s). Please include a discussion as to how the hours or services at these branches may have been tailored to help respond to community needs.

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23. A description of any community development service(s), as defined in 12 CFR 563e.12(j) provided by the institution, including information regarding the amount of time, resources, and staff devoted to providing such services and information regarding how the service(s) meets the credit needs of low- or moderate-income geographies or individuals.

24. (OPTIONAL) Any information regarding community development services provided by an affiliate(s).

Performance Context

25. (OPTIONAL) Any information that the institution wishes to offer that provides a clearer picture of its performance, including information about the assessment area(s) (such as economic conditions, demographic information relevant to loan demand or economic studies prepared by the institution or an outside party) and the institution itself (such as its business strategy, lending capacity or any constraints on its ability to meet the credit needs of the assessment area(s)).

26. (OPTIONAL) A copy of any analysis done by the institution of its lending activity, particularly with respect to the distribution of loans: (a) within versus outside of its assessment area(s); (b) in geographies of different income levels; and (c) to borrowers of different income levels and to businesses and farms of different sizes.

27. (OPTIONAL) A description of any actions taken to address lending disparities identified through internal reviews.

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Small institutions will be evaluated under the criteria outlined in 12 CFR 563e.26.

The information to be reviewed during the examination is intended to be derived, where possible, from records kept by the institution in the ordinary course of business (e.g., automated reports and CRA Public File), thus minimizing recordkeeping and examination burden. The examination will assess any information the institution wishes to present to ensure comprehensive evaluation of its performance.

A small institution may wish to provide supplementary information regarding its performance and factors that bear on that performance. In addition, it may wish to provide information regarding services and community development investments in order to improve upon a "Satisfactory" rating. A small institution also has the option to request an evaluation under the performance tests used for large institutions.

This outline guides an institution by identifying the types of supplementary information that may provide examiners with a better understanding of the institution's performance and, thus, expedite the examination process. An institution is not required or expected to provide any portion of the information described—completion is entirely voluntary. In addition, an institution may wish to offer other information that better and more succinctly describes its CRA performance.

Note: The terms in this outline are defined in 12 CFR 563e.12. For example, "geographies" means either census tracts or block numbering areas.

1. Provide a copy of any analysis done by the institution of its lending activity, particularly with respect to the three factors related to the distribution of loans: (a) within versus outside of the institution's assessment area(s); (b) in geographies of different income levels; and (c) to borrowers of different income levels and to businesses of different sizes. The institution may also wish to provide information regarding lending outside of its assessment area(s) to low- and moderate-income borrowers or geographies. If any analysis uncovered disparities in lending patterns, also provide a description of any actions taken to address the causes of such disparities.

2. Provide information regarding the institution's community development lending. The information would include affordable housing rehabilitation, construction and permanent financing of multifamily rental properties servicing low- and moderate-income persons.[1]

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3. Provide information regarding innovative or flexible loan programs targeting low- and moderate-income individuals or geographies. If available, provide the number and dollar amount of loans originated within the institution's assessment area(s) under such programs.

4. If the institution wishes the examiner to consider services and community development investments as defined in 12 CFR 563e.23 and 24, provide access to information regarding:

   a. retail services (including alternative delivery systems) serving low- or moderate-income individuals or geographies;

   b. community development services;[2] or

   c. community development investments.[3]

[1] Other types of community development loans include, but are not limited to, loans to not-for-pro t organizations servicing primarily low- and moderate-income housing borrowers, or other community development needs; loans to Community Development Financial Institutions, Community Development Corporations, minority- and women-owned financial institutions, and low-income or community development credit unions; loans to local, state, and tribal governments for community development activities; and loans to finance environmental clean-up or redevelopment of an industrial site as part of efforts to revitalize the low- or-moderate income community in which it is located.

[2] Community development services are required to be related to the provision of financial services and focus on serving low- and moderate-income housing needs or economic revitalization and development. They may include providing technical assistance in the financial services field to community based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms; lending executives to organizations facilitating affordable housing construction, rehabilitation, or development; providing credit, home buyer, or home maintenance counseling and/or financial planning to promote community development and affordable housing school savings programs; and other financial services the primary purpose of which is community development, such as low-cost or free government check cashing, electronic benefits transfer and point-of-sale terminal systems.

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[3] Qualified investments include, but are not limited to, investments, grants, deposits, or shares: in or to financial intermediaries that promptly lend to facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development; in support of organizations engaged in affordable housing rehabilitation and construction; in support of organizations promoting economic development by small businesses; to support or develop facilities that promote community development in low- and moderate-income areas for low- and moderate-income individuals; projects eligible for low-income housing tax credits; in state and municipal obligations that specifically support affordable housing or other community development needs; and in or to organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or sustain economic development. Information regarding community development lending (including loans for affordable multiunit housing) would not be included, but would be considered in the evaluation of the institution's lending.

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Institution Name

Small Institutions

The following is not provided as a substitute for the requirements for the CRA Public File. Rather, it summarizes the information from the CRA Public File that the OTS uses to evaluate CRA performance. It is intended to assist small institutions in confirming that the information covered by this request is needed for the examination. For specific guidance, please refer to 12 CFR 563e.43.

1. A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list.

2. Written comments received from the public during the review period that specifically relate to the institution's performance in helping to meet the credit needs of the assessment area(s) and any response by the institution.

3. The institution's loan to deposit ratio for each quarter of the review period and any additional data it wishes to provide regarding this ratio.

4. A list of the institution's branch offices, including their street addressees and geographies and a list of branch offices opened or closed during the review period.

5. If the institution reports residential loans under the Home Mortgage Disclosure Act (HMDA), copies of the HMDA Disclosure Statement provided by the FFIEC pertaining to the review period and the loan application register for the current year.

6. A trial balance or other listing of small business and small farm loans made by the institution during the review period, sorted if possible by MSA, showing the loan number (or other unique identifier), the loan amount at origination, the date of origination, and, if possible, the location of the loan.

7. For any category of consumer loans the institution chooses to have considered, a trial balance or other listing of such loans originated or purchased during the review period sorted, if possible, as in (6) above.

8. If the institution elects to include affiliate lending for any part of the review period, a copy of the comparable data for the affiliate should be provided for each loan type to be considered.

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9. The institution's CRA Notice.

10. A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the institution's branches and descriptions of material differences in particular branches, if any. At its option, an institution may include information regarding the availability of alternative systems for delivering retail banking services.

Large Institutions

The following is not provided as a substitute for the requirements of the CRA Public File requirements. Rather, it summarizes the information from the CRA Public File that the OTS uses to evaluate CRA performance. It is intended to assist large institutions in confirming that the information covered by this re-quest is needed for the examination. For specific guidance, please refer to 12 CFR 563e.43.

1. A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list.

2. Written comments from the public during the review period that specifically relate to the institution's performance in helping to meet credit needs in the assessment area(s) and any response by the institution.

3. A list of the institution's branches, including their street addresses and geographies and a list branch offices opened and closed during the review period.

4. A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the institution's branches and descriptions of material differences in particular branches, if any. At its option, an institution may include information regarding the availability of alternative systems for delivering retail banking services.

5. If the institution reports residential loans under the Home Mortgage Disclosure Act (HMDA), copies of the HMDA Disclosure Statements provided by the FFIEC pertaining to the review period and the loan application register for the current year.

6. The institution's CRA disclosure statements for the review period.

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7. For any category of consumer loans the institution chooses to have considered, a trial balance or other listing of loans made by the institution for each of the two prior calendar years, sorted, if possible, by MSA, showing the loan number (or other unique identifier), the loan amount at origination, the date of origination, and, if possible, the location of the loan.

8. If the institution elects to include affiliate lending for any part of the review period, a copy of the comparable data for the affiliate should be provided for each loan type to be considered.

9. The institution's CRA Notice.

10. If the institution received less than a satisfactory rating during its most recent examination, a description of current efforts to improve its CRA performance.

Introduction

This section of the Handbook provides general guidance for conducting and controlling compliance examinations. Effective control expedites and enhances the examination process by ensuring that objectives are met efficiently.

The first step toward initiating an examination, the setting of scope, was discussed in Section 110 of this chapter. This section proceeds on the premise that the type of examination to be conducted has been identified (see Section 105) and the initial scope has been established. This section also proceeds on the premise that a "regular" examination is being conducted. If a "targeted" or "special" examination is scheduled, the process described here may be abbreviated as appropriate.

Before reading further in this section, the examiner should be familiar with the discussion of the "top-down/risk-focused" approach presented in Section 105 of this Handbook chapter.

The section discusses:

- Procedures Upon Arrival
- Controlling the Examination
- Analysis of the Compliance Management Function
- Review of Regulatory Areas
- Appendix A: Compliance Management Questionnaires
- Appendix B: External Interviews
- Appendix C: Sampling Techniques
  - — Judgmental
  - — Nondiscrimination
  - — Branch Systems

Procedures Upon Arrival

Upon arrival at the association, the examiner-in-charge ("EIC") should meet with senior management, generally including the CEO, and the compliance officer to discuss the anticipated scope and administration of the examination. One objective of this meeting is to summarize for management the current OTS approach to compliance examinations. Other topics that may be discussed, which bear on the course of the examination, include:

- Changes in control, board of directors or management;
- Changes in organizational structure or business strategies;
- Changes and events in the local economy and the community; and
- New products just introduced or being readied for introduction.

If not received previously, the EIC should request an organization chart or list of the officers in charge of the various departments and branches in which the examiner will be working and of any other key individuals recommended by management. Other administrative matters that might be discussed include:

- The names of examiners and designation of the EIC as the contact for any problems staff or management may encounter with the examination process;
- Any particular equipment or support needs anticipated (e.g., unrestricted telephone line, photocopier, etc.);
- Importance of staff cooperation in responding to requests for information and documents; and
- Availability of examiners to answer questions from staff regarding requested information or about compliance matters generally.

The examiner should obtain any forms, policy statements, procedures manuals and other docu-

ments that were submitted by the association prior to the on-site examination.

Controlling the Examination

Controlling the examination is an important responsibility of the EIC. The level of control required will depend on the activities to be performed, the size and experience level of the examination team and the size and nature of the institution. Several key elements of control are addressed in the following paragraphs.

Establishing Objectives

Establishing clear objectives and a methodology for the team members to follow is crucial. The EIC must ensure that assistants understand the objectives for the examination as a whole and for the specific parts assigned to them. Objectives should be specific, measurable and achievable with available resources within the required time frames.

The examination procedures contained in the individual Handbook sections are designed to be comprehensive. It is important that only appropriate procedures be selected with respect to each compliance matter under review. Assisting examiners should notify the EIC as questions regarding scope or depth of review occur. The EIC should assist examiners in understanding the initial scope of procedures for each compliance area and in determining when expansion is required.

Organization

Organization involves scheduling meetings with institution personnel; arranging workspace; prioritizing and scheduling assignments and work flow; communicating examination status; reviewing, organizing and indexing workpapers; preparing the report of examination; and concluding the examination according to OTS procedures. Effective control of the examination requires that the EIC anticipate, plan and conduct each of these activities as an integrated part of the overall process.

Assignments and Monitoring

The EIC must determine the expertise necessary to perform certain aspects of the examination and make assignments accordingly. To the extent feasible, examination procedures requiring access to the same documentation should be assigned to the same examiner in order to avoid duplicative file searches.

Each assistant's performance must be monitored throughout the process to ensure that objectives are met, schedules maintained and problems recognized and resolved. Early identification of problems allows assistants to correct mistakes and improve skills without harm to the examination product. Monitoring also allows for necessary adjustments to scope where noncompliance is identified, but minimizes unnecessary diversions from the planned examination program.

Time Management

It is important that the examination be conducted in as short a period as is practical. When making assignments, the EIC should estimate the time necessary to complete each portion of the examination. Actual time should be tracked against initial estimates as a means to identify scheduling problems as early as possible. If a material departure from the initial estimate of examination time is foreseen, this should be discussed by the EIC with a supervisor immediately.

Training and Evaluation

On the job training and evaluation of assistants is an essential responsibility of the EIC. Trainee or assistant examiners may frequently need guidance, depending on their training, experience and ability. Assignments should be given with ample instructions. Feedback and questions should be encouraged. The EIC or another experienced examiner should be available for guidance and to review the work of a trainee assistant. However, the EIC will generally be responsible for the official evaluation of the assistant's performance at the conclusion of the examination.

Analysis of the Compliance Management Function

Once the examination team has taken care of routine logistical matters, the primary focus should be on performing an analysis of the association's compliance management function. The EIC should arrange meetings with the Compliance Officer, appropriate Senior Management and the Internal Auditor (if the internal audit includes compliance matters).

The purpose of these meetings is to gain a thorough understanding of how management approaches its compliance responsibilities and to determine how well management has integrated compliance into its daily operations. These meetings should probe into areas such as the compliance knowledge of these individuals (fully recognizing that senior management will not have as detailed a knowledge of regulatory requirements as the compliance officer), the internal systems of the association, available training programs and attendance, the extent of internal reviews and their findings, the involvement of the compliance function in new product development, steps taken to correct previously cited deficiencies and CRA activities.

Appendix A to this section contains questionnaires that can be used to guide these discussions. The examiner should adapt these questionnaires to the circumstances at each association and in response to the findings of the pre-exam analysis. Under no circumstances should the questionnaires be given to management to complete. These should be face-to-face discussions held at the very beginning of the on-site portion of the examination, prior to any sampling or transaction-testing. The results of the interviews will help the examiner further refine their scope and determine the extent to which individual laws and regulations and particular aspects of those laws, need be reviewed. For example, the questionnaire for the compliance officer asks many regulation specific questions. Poor, incomplete or hedged answers to a particular question should flag for the examiner the need to do some review of that regulatory subject.

These discussions, taken together with the pre-examination analysis, constitute a major portion of the compliance examination process and form the foundation for the review of regulatory areas. Done properly, this analysis and interview process should substantially reduce the amount of effort that needs to be devoted to reviewing transactions. It should be clear from these first two parts of the examination process whether management has taken a proactive approach to compliance and can demonstrate its abilities to assure compliance.

During this part of the examination process, the examiner should also conduct community contact interviews for CRA purposes. Suggestions for conducting these external interviews are contained in Appendix B to this section.

Review of Regulatory Areas

As mentioned in Section 105, all laws and regulations within the purview of the Specialized Compliance Examination Program fall into two main groupings for purposes of this stage—a Core Group and a Sensitivity-Based Selection Group. The Core Group includes laws and regulations that involve high-risk, high-profile issues and matters of great sensitivity to the public and to this agency. The Sensitivity-Based Selection Group includes all other laws and regulations.

Core Group

The Core Group consists of the following:

Fair Lending
- 12 CFR 528 - Nondiscrimination
- Regulation B (discrimination issues only)
- Fair Housing Act
- Home Mortgage Disclosure Act

Community Reinvestment Act

Regulation Z (calculation aspects only)

OTS Mortgage Regulations (notifications and accuracy of adjustments only)

Bank Secrecy Act

All applicable examination procedures pertaining to those aspects of the laws and regulations in the

Core Group are to be performed at each regular compliance examination. As a general rule, judgmental sampling should be used to carry out the procedures. Statistical sampling can be used but only in extraordinary circumstances. Appendix C contains information on sampling techniques.

The examiner should notice only certain aspects of Regulations B and Z and the OTS Mortgage Regulations fall into this Core Group. That is not to say that all other aspects are eliminated from review—the remaining aspects of those regulations fall into the Sensitivity-Based Selection Group. The Regulation B review performed as part of this Core Group analysis should focus on those procedures relating to discrimination on prohibited bases, prescreening, discouraging applications, and imposing liability on nonapplicant spouses. The Regulation Z review performed as part of this Core Group analysis should focus on those procedures relating to the calculation of Annual Percentage Rates, use of a composite APR in discounted variable rate mortgage transactions, finance charges, amount financed, and payment schedules, as well as the treatment of mortgage insurance, credit life insurance and prepaid finance charges. The review of ARM products should focus on the accuracy and timing of the adjustment notifications and the actual adjustments.

Sensitivity-Based Selection Group

All remaining laws and regulations fall into this second grouping. The selection of laws and regulations for review is based on the association's history of compliance, the degree to which the examiner has reason to believe there may be weaknesses in a given area, the length of time since a particular law or regulation has been included in the scope of a compliance examination, areas where the association has had problems in the past, areas where other similar associations have experienced problems, areas where there is a current public interest, and new or substantially changed laws or regulations, or new product offerings since the previous examination.

For example:

- if the examiner is aware that there has been a large percentage of consumer complaints regarding the handling of escrow accounts, the examiner would include escrow accounts in the review and follow the examination procedures for escrow accounts in the RESPA section of this handbook.

- if the examiner determines that the association began offering home equity lines of credit since the previous examination, a judgmental sampling of that product should be selected for review. The examiner might want to focus on the Truth in Lending Examination Procedures for Open End Credit numbers 11 - 19.

- if the examiner sees that the association's flood hazard insurance procedures are insufficient to assure that flood insurance notices are made, then a review to determine that insurance is maintained on covered properties would be in order. The examiner should look to the Flood Insurance Examination Procedures and select procedure 1 under "Notice Requirements."

- if the examiner determines that the association has recently reviewed its adverse action notifications and has found substantive problems, a review of these notifications would be in order to assure that any corrective remedy is properly working. Regulation B Examination Procedure numbers 2 and 3 would provide guidance here.

- if the examiner is aware that local financial institutions are not adhering to the funds availability requirements for nonlocal checks, then a judgmental review of the association's adherence to the regulatory standard should be undertaken. The examiner should perform the Expedited Funds Availability Act Examination Procedures for time frames for local checks.

- if the examiner observes that no aspect of the Fair Credit Reporting Act was reviewed onsite during the previous compliance examination, then the examiner should select some aspect of that law for inclusion in this particular examination. In this instance, the examiner might want to determine that the association, as a user of information from a consumer reporting agency is making the required disclosures.

Not all laws and regulations will be included in this review at every examination. Moreover, complete reviews of all regulatory requirements for these laws and regulations will be the rare case—the focus is on various aspects of those laws and regulations selected depending upon certain criteria and current interest. In no event, however, should two consecutive regular compliance examinations take place where a particular law, and at least some aspect of it, is omitted from the scope of the on-site portion of the examination. The Washington office will issue periodic advisories concerning aspects of laws and regulations that are posing compliance difficulties for associations or that are receiving an intense degree of public scrutiny to aid in this selection process. The Regional offices are strongly encouraged to assure inclusion of localized concerns in compliance examinations, as well. These areas will change over time and the examiner should exercise good judgment in this selection process by focusing on "risk-prone" issues.

Above all, the examiner should not view the laws and regulations that fall into this grouping as discretionary or optional items. The purpose is to afford the examiner the flexibility to focus on important areas and to minimize the time spent on areas where the compliance systems of the association appear strong and where the likelihood of problems or noncompliance is extremely small.

To some measure, the extent of this review will turn on the degree to which the association's Compliance Officer has performed. When the examiner is confident that the work of the Compliance Officer is thorough and effective, that the Compliance Officer has been delegated the requisite authority by the Board of Directors to effectuate corrective actions, and that the compliance track record proves this, the examiner's degree of sampling and review is correspondingly reduced. On the other hand, inadequate attention by the Compliance Officer to critical areas, or a lack of follow-up in general means that the examiner will have to exercise much discretion in determining those aspects of particular laws that will be reviewed.

Compliance Management Questionnaires

Senior Management Questionnaire

The EIC should describe what he/she knows about the association's business strategy and ask management for further elaboration.

Describe your approach to managing the compliance function.

What percentage of the resources under your control are devoted to compliance?

How do you stay abreast of changes in laws?

How do you assure that your staff stays abreast of changes in laws?

How often do you review your geographic lending distribution?

Have you had any compliance training?

How do you assure that compliance is considered as part of new product development, marketing and advertising?

How are you involved in community outreach? How do you encourage your staff to be involved with the community and bring back concerns and suggestions?

Describe your marketing strategy.

Do you make any periodic reports to the Board of Directors on your CRA and compliance efforts?

Would you describe your Board's participation in CRA and compliance matters as active or passive?

What is your most typical consumer complaint?

What is your view of the role of your compliance officer in this organization?

What role does the internal audit department play in managing compliance responsibilities?

Compliance Officer Questionnaire

What is the biggest compliance problem that you have worked on during the past year? Would you describe this as a typical or unusual situation, in relation to how your compliance program works?

What is the main complaint that your customers have? Are there any areas in which compliance with federal rules causes more confusion than understanding?

Do you have any other responsibilities at this association? What percentage of your time are you able to devote to compliance? Do you think that this is adequate? Should more time be spent on compliance? Is more staff needed?

Describe where you believe your compliance responsibility fits within the management structure at this association.

Do you get adequate support on your compliance program from your superiors?

We sometimes see that department managers would like to correct compliance problems quietly, without calling attention to them. In other cases, employees are told to keep quiet about compliance problems. How are employees and their managers encouraged to come forward with compliance problems and questions?

Describe your compliance experience. Where did you get your training? Do you attend any periodic compliance seminars? If so, which ones and when?

How do you keep abreast of changes in laws and regulations? How do you communicate those changes to key personnel within the association? What kinds of compliance publications do you subscribe to, if any?

What kind of compliance training programs have you put in place, particularly for lending officers and account personnel? How did you narrow down the material and the list of those to attend? Do you see an immediate need for staff training that you have not yet been able to arrange for?

How involved is either your in-house or outside counsel with compliance matters? Do they review forms, disclosures, notes, agreements, policies, etc.?

Do you work with the marketing and product development staff on new product initiatives to assure that compliance issues are being considered? Are there any programs or promotions that have been developed during the past year which you found out about after-the-fact?

Does a comprehensive self-assessment, or more of an audit-program approach seem to make more sense for this association? What is the flow of the written reports of your reviews?

How often do you determine that your policies and procedures in the following areas are current and consistent with law and regulation?

— lending
— training programs
— consumer complaints
— advertising and promotions
— branch administration and office procedures

How do you determine whether any changes in automated systems will adversely affect disclosures?

How much of your compliance review work involves testing actual transactions? In which areas do you draw your largest samples? How do you select your samples? Are there areas of compliance in which performance is considered to be so strong, or the consequences of noncompliance so minimal that no sampling is done?

How do you get your association to correct deficiencies uncovered during your reviews?

How do you verify that:

— applicants are not being discouraged from applying for credit?
— applicants are able to receive credit in their own names (without a spousal signature)?
— credit histories are maintained properly?
— applicants receive timely and accurate adverse action notices?

Have you found a way to stress with lending staff and officers, the importance of nondiscrimination in lending? Has the board of directors communicated any particular interest in having a nondiscrimination review conducted?

As part of the PERK, we asked for information on any geographic distribution analysis of loans and applications that you may have conducted. Exactly how did you do your last review? What did you conclude from it? Were any changes made as a result?

How do you assure that the loan application registers are being completed properly?

How do you determine that:

— TIL disclosures are accurate and given on time?
— APRs and FCs are correctly calculated?
— Rescission rules are being adhered to?

Do you pay particular attention to discounted ARMs in your reviews? Loans with PMI? Loans with other mortgage guarantee insurance?

How do you assure that ARMs are being adjusted properly, and that ARM notifications are accurate and timely?

How do you determine whether a property serving as collateral for a loan is in a special flood hazard area? How do you assure that flood insurance is maintained during the life of the loan?

How do you make sure that RESPA's requirements are being adhered to? Did you have any problems complying with the recent servicing and transfer and escrow rules?

Do you have any EFT activity? If so, how do you determine that:

— access devices are issued properly?
— consumers are furnished adequate initial disclosures?
— error resolution procedures are followed properly?
— records are maintained properly?

Explain your check-hold policies under the Expedited Funds Availability Act. Do you test periodically to assure adherence to any time frames?

Do you receive requests from the Federal government for financial information on your customers? If so, how do you determine that the financial information is released consistent with the Right to Financial Privacy Act?

Does your association collect debts in other than its own name? If yes, describe how you comply with the notice requirements and prohibitions in the Fair Debt Collection Practices Act.

Describe your BSA compliance program. What kinds of periodic reporting do you do? Do you review CTRs for completeness and accuracy? Do you make sure that the forms are filed with the IRS? What kind of analysis do you do to assure that there is no money laundering activity going on in your association? Do you have a system to aggregate multiple transactions?

As part of the PERK, we asked you for copies of recent advertisements. How do you ensure that your advertisements are in compliance with rules?

Do you believe that there are any particular weaknesses in your compliance activities?

Internal Auditor Questionnaire

Describe your reporting relationship within the association.

Do you include compliance matters in your internal audits?

If "no," stop here.

If "yes," then ask the following:

Have you had any compliance training?

How do you keep on top of changes to laws and regulations?

Are your audits conducted pursuant to a set schedule? Do you adhere to it? What kind of factors influence the frequency?

How do you determine the frequency of future audits based on past audit findings?

How often do you do audits that include compliance?

Do audits cover the operations area, including all laws and regulations and applicable policy?

What were the findings of your last audit that included compliance?

Do you check to see that corrections to procedures are consistent with your audit findings?

What kind of sampling process did you use in your last audit?

Do your audits determine that no outdated forms and advertisements are used?

What kind of calculation equipment do you use to test Annual Percentage Rates?

What kind of a response did you get from the Board of Directors when you presented your findings?

Is your department adequately staffed to conduct thorough reviews for compliance?

Guidelines for External Interviews

In this appendix several suggestions are offered to facilitate conducting interviews external to the staff of the association being examined. The presentation is divided into two major segments: Interviews conducted for "information gathering," and interviews conducted with complainants in response to protests or other formal complaints led against the association.

Information Gathering

When seeking factual information relevant to the examination of one or more institutions, the activity of data gathering must be handled discreetly. Although the examiner should identify his or her position, it is usually not necessary to identify an examination in progress at any specific association. A statement that data is needed for a general assessment of community trends (etc.) is usually sufficient.

Whenever possible, data gathering should be community-oriented, rather than institution-specific. For example, it is better to ask about the perceived marketing efforts of all, or a group of, financial institutions in a given community, with perhaps specific comment on each, than to simply ask how the marketing effort of First Savings Bank is viewed. If prescreening by real estate agents on behalf of one association is suspected, it is better to inquire about the loan solicitation practices of all or several lenders when talking to both sales agents and other community contacts.

Some outside contacts may be little more than a call to request prepared information. For example, obtaining a copy of a recent report by the Municipal Planning Commission. However, review of that information may lead to an interview with a Commission member. Other sources of data may be non-profit research agencies, colleges and universities, trade groups and professional organizations (e.g., the local Board of Realtors), and individuals in the community known to have the knowledge or contacts sought by the examiner. With regard to CRA assessments particularly, housing and small business coalitions, community activist groups and civil rights organizations may be willing to share their views on community developments.

A successful interview usually depends upon the preparation of the interviewer. The examiner should have some knowledge of the person or group to be interviewed, but most important, must have a firm grasp of his or her objectives in conducting the interview. Many interviewees will have their own agenda to pursue. The examiner must be alert to prevent a reversal of roles.

In contacting any outside sources, it is important that the examiner adhere to these principles:

- Do not misrepresent your professional or personal position;
- Be professional in speech, appearance and manner, as a representative of the OTS;
- Do not violate the rule of confidentiality by revealing privileged information concerning the OTS or about any supervised institution or its directors, officers, or staff; and
- Do not imply or promise any return favors or payment for information obtained. If there is a cost to obtain required data, this must be arranged through normal procurement channels.

Because the collection of outside data, through interviews or otherwise, can be quite time consuming, the examiner should attempt to make the result as broadly applicable as possible to all supervised institutions in the relevant market. Information should be maintained at the Regional Office for access by examiners assigned to other associations. This will minimize duplication of effort and unnecessary burden on the local sources.

FFIEC Short Course

The Federal Financial Institutions Examination Council offers a "home study" short course for financial institution examiners entitled, *Outside Contact Interviews ¾ Interviewing for Information from the Community.* The course, which consists of a VHS video tape and student workbook, focuses on basic interviewing strategy useful in the context of interviews to gather CRA, Fair Housing, and nondiscrimination information. Although the original course was packaged in the early 1980's, the instruction provided remains relevant to interviews conducted today. Regulatory staff

interested in the availability of this course for their own use should contact their Regional Training Manager or Compliance Programs.

Complainant Interviews

An examiner may be asked by OTS management to perform an on-site investigation of a consumer's complaint. In addition to a review of association files and interviews with association personnel, it may be necessary to contact the complainant directly, either by telephone or in person. It is particularly important that complaints involving alleged discrimination on a prohibited basis be investigated immediately and thoroughly.

Before contact with the complainant is considered, the examiner should become familiar with the complaint, the association's initial response, and all relevant policies and procedures (articulated and actual) in effect at the association. If direct contact is still deemed necessary, an interview with the complainant may be scheduled. The examiner should emphasize that his or her role is to gather additional information and not adjudicate the complaint. Special care must be taken to avoid making statements that may seem to either defend or condemn the actions of the association or the complainant.

The following outline may be helpful in preparing for an interview involving a complaint of discrimination:

- *Basic data:* Obtain the complainant's name, address, telephone number and (to the extent relevant to the complaint) race, color, religion, national origin, sex, marital status, age and any other information of which the association had knowledge. The latter may include length of residency, occupation, place and length of employment, educational background, military status, size of family and amount and composition of income.

- *Financial data:* Determine the complainant's financial situation, for comparison with the data provided by the association in its response to the complaint. Obtain any information available about the complainant's ability and willingness to repay a debt, such as past credit history, judgments, bankruptcies, and delinquent accounts. Determine whether the complainant had dealt previously with the association and, if so, the history of those transactions.

- *Dealings between complainant and institution:* Obtain full details of all dealings between the complainant and the association or any agent of the association relevant to the complaint, including the names of persons dealt with and the dates of contacts. Obtain copies of any relevant documents in the complainant's possession. Ask the complainant to restate the basis for the complaint and to describe in detail the association's actions considered to be discriminatory.

- *Other financial arrangements:* If, since the date of the alleged discriminatory act, the complainant has made or attempted to make other financial arrangements for the same purpose for which the original loan was sought, determine the terms of such subsequent arrangements and with whom they were made. If possible, obtain a copy of any subsequent credit application approved by another financial institution.

- *Other action by the complainant:* Determine whether the complainant has led discrimination charges or complaints with any other federal, State, or local authority or agency or has retained legal counsel or other professional representation. If other actions have been initiated, ascertain the status of these actions.

- *Identity of potential complainants:* Ask the complainant whether he or she knows of other persons who allege to have encountered similar experiences. If possible, obtain their names and addresses. This will allow examination of related institutional records that may reveal a pattern of violations if prohibited practices have, in fact, occurred.

- *Closing the interview:* Cordially thank the complainant for his or her time and cooperation. Emphasize again that the role of the examiner is as a fact finder. Consistent with OTS guidelines, describe the steps remaining to reach a conclusion in response to the com-

plaint, but avoid committing to any specific outcome or response time.

Sampling Techniques

Several of the Handbook sections refer to the selection of a test sample. Unless specific directions are contained in a section for the size or method of sample selection to be followed, the general discussion of sampling in this subsection may be used to select an appropriate sample. In every case, the objective of sample selection is to provide reasonable confidence that the conclusions developed by the examiner are valid. If, in any situation, the examiner has significant doubt as to the validity of a conclusion, an expansion of the sample should be considered.

This appendix is divided into three major segments:

A. Judgmental Sampling—General

B. Sampling for Nondiscrimination

C. Branch System Considerations

A. Judgmental Sampling—General

This general discussion is intended to apply primarily to judgmental sampling for other than nondiscrimination compliance. A separate discussion of sampling applicable to nondiscrimination issues is presented under Part B.

The feature that distinguishes judgmental from statistical sampling is that each item in the universe does not have an equal or random chance of being selected. Because a predetermined hypothesis is the subject of the test, selection is deliberately structured to build a sample populated with known examples of the attributes or characteristics being tested.

With statistical sampling, the objective is to form conclusions based on the sample that can be applied to the universe with a calculated level of confidence. Judgmental sampling does not support a statistically valid projection of sample results to the universe. Conclusions are valid only for the sample. Nevertheless, judgmental sampling is a valid means to test and confirm various hypotheses drawn from interviews, past experience or other relevant sources about certain characteristics of all or part of the universe.

Judgmental sampling is useful for testing the anticipated effect of, or compliance with, a specific policy or procedure. The hypothesis to be tested may be either positive or negative. In other cases the hypothesis is based on the results of a statistical sample that revealed a possible weakness, but which was not conclusive. The examiner may use an expanded, judgmental sample to attempt to isolate the problem and to confirm an hypothesis as to its cause. A judgmental sample may also be useful to better quantify a known problem; for example, to estimate the dollar amount of reimbursable overcharges resulting from the actions of one loan officer who used faulty formulas.

Number of Samples

The number of judgmental samples to be taken depends on the circumstances at each association. The number of samples required will generally correspond to the number of hypotheses to be tested, although in some cases one sample can be used for a number of tests.

Sample Selection

There is no predetermined or established method for selecting a judgmental sample. The items selected should, of course, include the characteristic(s) being tested. However, when the test objective is to identify the cause of a specific characteristic, the selected items may have to be compared to items that are otherwise similar, but which do not include the test characteristic.

When defining the characteristics that will be subjected to testing, it is important to avoid defining the target population either too narrowly or too broadly. For example, in testing the calculation and disclosure of finance charges under Regulation Z, it will probably make sense to break credit transactions down by type (e.g., open end, closed end; then real estate, secured consumer loans, signature loans, etc.) Within a type, it may be useful to segregate further. Real estate loans may be divided into principal residence and other or fixed rate and adjustable rate.

If the association offers six different ARM programs with widely differing terms, it may be necessary to specifically sample each of the six programs. Alternatively, if all six ARM programs are identical except for, say, length of maturity and interest rate, and all are processed using one computer program, it may be sufficient to sample only two or three of the programs. Depending upon the association's administrative structure, it may be necessary to sample transactions based on which employee, department or branch office originated or processed the item. Certainly, if the initial sample reveals a problem that seems to correspond to an identifiable attribute of the affected transactions, further sampling of other transactions having that attribute is indicated. The focus of extended sampling should continue to narrow until the cause of the problem has been isolated.

Sample Size

Since statistical validity is not a key issue, the ideal size of a judgmental sample cannot be stated in terms of numbers. Enough items should be selected in order to draw a reasonable conclusion. Consequently, the examiner should balance the need to be reasonably certain that an hypothesis is correct against the need to move the examination forward.

When expanding an initial sample, either statistical or judgmental, using judgmental selection, expansion size is dictated by that necessary to finally confirm the examiner's hypothesis or to efficiently determine the cause or extent of noncompliance. However, discretion should be exercised. In some cases, the answers may be found by other means more efficient than selecting an expanded sample. The one loan officer using a faulty formula, once identified, may be able to provide detailed records of all his transactions, precluding the need to pull additional loan files. If a substantial increase in sampling effort is foreseen, the effect of this increase on total examination time should be discussed by the EIC with a supervisor.

B. Sampling for Nondiscrimination

In examining for the presence of illegal discrimination, the "norm" is not a succinct external standard or condition against which selected sample items can be tested, as is the case with the technical requirements of the regulations. Rather, discrimination testing requires that loans applied for or granted to certain groups of customers be compared against the loans applied for or granted to other groups of customers. Review of a single group of loans selected at random, while capable of raising questions about apparent disparate treatment patterns suggested in that sample or about policies possibly discriminatory in effect, cannot be relied upon to yield definitive conclusions about most discrimination issues.

Proving or disproving the presence of credit discrimination is a process of judgmental sampling and hypothesis testing. Transactions involving each protected group to be considered must be specifically identified and segregated, each group represented by a unique universe. When a selected universe is too large to permit review of each transaction, then statistical sampling techniques may be used to select out a test population.

In conjunction with identifying the judgmental samples involving protected classes of customers, the examiner begins building various hypotheses. These can be based on information obtained during review of lending policies and procedures or from any other source available to the examiner. Generally, an hypothesis will be in the form of a statement to be proved or disproved based on data found in the loan files comprising the sample. Three examples of hypothesis tests are presented to illustrate:

- *Hypothesis:* "Underwriting requirement X is strictly applied to minority borrowers, but is often waived for white borrowers." A review of the loan files for black and Hispanic borrowers and for white borrowers reveals that in 18 out of 20 minority loans (90%) requirement X was imposed, but the same requirement was imposed on only five out of 45 loans (11%) to whites. This hypothesis, which developed because the examiner considered requirement X, as stated in the institution's lending policy, highly restrictive if applied to the "average" applicant, is proved out by the sample.
- *Hypothesis:* "Single female applicants are more frequently rejected for failure to provide a cosigner than are single male applicants of

comparable credit worthiness." A review of rejected and approved applications from single women and from single men reveals that only four out of 34 female applicants were rejected for failure to provide a cosigner (12%) compared to 15 out of 77 male applicants (19%) rejected on the same basis. However, a second look reveals that 18 of the 34 female applicants (53%) were required to produce a cosigner, compared to 21 of the 77 male applicants (27%).

In this case the original hypothesis, generated on the basis of complaint letters from two of the rejected female applicants, was not supported by the sample. But the original hypothesis was off target in focusing on only rejected applications. Instead the examiner should have been looking at the underlying policy for requiring cosigners, which the association was not applying uniformly. Fortunately, by drawing a sample of both rejected and accepted applications, the examiner identified the discriminatory practice.

- *Hypothesis:* "The association does not set different maximum term and loan-to-value requirements for residential mortgage loans based on the average age of the housing stock in the borrower's neighborhood." Based on local housing data keyed to ZIP codes provided by the institution, the examiner compares terms approved for loans secured by houses 20 to 25 years old located in neighborhoods with an average housing stock age of 35 years with similarly aged security properties in neighborhoods with an average housing stock age of 15 years. Adjusting for variations in applicant credit risk and other variables unique to each loan, the examiner determines no discernible correlation between average age of the housing stock and approved loan terms.

  This hypothesis was developed on the basis of management's response to a housing advocate's claim that the association based its loan terms on the age of the neighborhood housing stock, which was discriminatory in effect since the older neighborhoods were predominately minority. In this case, the hypothesis, and management's response, was supported by the judgmental sample.

In situations where the sample data supports an hypothesis that illegal discrimination has occurred, the association should be given an opportunity to show bona fide, nondiscriminatory reasons for the results. Factors not yet considered by the examiner may be determinative.

Sampling for credit discrimination in a branch office environment raises unique problems, especially in highly decentralized branch networks. To test for discrimination without introducing erroneous assumptions, the examiner must consider the location of the branch originating the credits or receiving the applications. A branch in an integrated area affords the most convenient opportunity to compare treatment of minority and nonminority applicants within a single branch. However, to identify subtle differences in underwriting requirements or available credit products between branches serving predominately minority and predominately non-minority markets, policies, procedures and test samples must be compared between branches.

While location may account for differences in the relative numbers of customers from various protected groups between branches, the differences should reasonably reflect actual composition of the community's population. Underwriting standards and available credit products should not vary between branches in a way that adversely affects the opportunities of protected groups. Additional information regarding sampling in a branch environment appears under the next heading.

C. Branch System Considerations

Branch systems pose special sampling problems. The organization and operational flow existing for the particular items under investigation will determine the procedures to be followed. Special consideration should be given to branch visits when examining for credit discrimination and CRA compliance. It is important to include in the examination those branches which serve low- and moderate-income neighborhoods, and branches whose "communities" are populated by racial minorities. The principal types of operational ar-

rangements and their respective procedural considerations follow.

Centralized Recordkeeping

When all branch operations for the relevant lending function are closely regulated by the head office and when all loan records and files for the association are centralized in that one location, the appropriate universe for drawing samples would be the head office files. The sample should be selected with care to avoid a concentration in loans originated at only a few branches. This may require supplementing a random statistical sample with a judgmental sample if the original sample contains an insufficient number of items from one or more branches to form reasonable conclusions about performance at the under-represented branch(s).

An on-site examination at selected branches would focus mainly on ascertaining the level of branch understanding of and compliance with head office policies and procedures, the nature of any branch prescreening activities, the attitudes of branch personnel, and other indicators of compliance that require first-hand observation. Such on-site examinations should be considered for all major branches; for example, branches generating 20 percent or more of the association's total volume of a particular category of loans. A random selection of smaller branches should be checked on a rotating basis such that all branches can be covered over a six-year period.

Regional Processing Centers

When branch operations for the target loan category are administered through regional processing centers, each center should be examined in the same manner as the head office with regard to all regional operations. This will generally require conducting a "streamlined" version of the compliance examination. The universe for drawing samples would be the activity processed at that center. In addition, a spot-check of branch office operations is still required along the lines indicated in the previous paragraphs.

Decentralized Loan Administration

When the branch system has a decentralized loan administration, with each branch processing its own loans and retaining all its own records, the examination procedure should focus more extensively on the operations of individual branches. The nature and extent of individual branch coverage will, however, depend upon the degree of head office control over branch policies and procedures.

In situations where the head office sets standard operating policies and procedures, and has an aggressive internal monitoring and enforcement program to ensure branch compliance, it may be sufficient to treat the branch network as a centralized operation by concentrating on the internal compliance program. However, spot-checks at selected branches will still be necessary, following the method outlined under Centralized Recordkeeping, above.

If observation shows that branches operate with considerable independence, that standardization of forms, policies and procedures does not exist, or that head office enforcement of standards is lax, then each branch examined must be treated essentially as a separate institution. This will call for a detailed review of the forms, policies, and procedures at each selected branch, followed by an adequate sampling of branch activity, with each branch treated as a separate universe. Under these highly decentralized branch operations, each examination should include all major branches, plus a rotating sample of other branches such that all branches are examined at no more than four-year intervals.

Introduction

This section discusses reaching conclusions about the association's compliance management function and regulatory findings, and closing the on-site portion of the examination.

Reaching Conclusions

The ability to formulate conclusions, prioritize findings, and communicate those findings to directors management and OTS personnel is crucial to the supervisory process. For examinations and supervisory analyses to be most effective, conclusions must be drawn from a comprehensive analysis of patterns and practices. Although individual violations of a substantive nature must be dealt with, it is attention to the pattern or practice that will enhance future compliance.

As individual examination components are completed and workpapers compiled, the examiner should begin to formulate an impression of the association's overall compliance posture. The development of examination conclusions, in preparation for the closing conference with senior management, involves:

- Reviewing all major findings from the examination (including trends);
- Considering the association's operating environment;
- Transforming the assembled information into a unified assessment of the association's compliance position, which assessment will be presented in the compliance report of examination and converted into ratings;
- Communicating the results effectively; and
- Facilitating the corrective action process.

When determining what weight a particular practice or other factor should be given in the overall conclusion, the examiner should consider the potential future effect of that factor, as well as the past and present effects. One of the goals of the supervisory process is to maximize future compliance. Therefore, it may be appropriate to judge compliance deficiencies that have been corrected prior to or during the course of the examination less severely than deficiencies still uncorrected.

In making conclusions, the examiner should structure the process to first form an assessment of the compliance management function of the association. Conclusions should be reached about the effectiveness of the compliance program, the personnel assigned to the compliance function, training programs dealing with compliance issues, policy deficiencies and the severity of individual violations of laws and regulations, focusing more attention on those of a systemic nature that result from program weaknesses.

Closing Management Conference

The closing conference between the examiner and the association brings the on-site portion of the compliance examination to an end. If the examination has been conducted in the proper atmosphere of open communication and cooperation, there should be few surprises for either party at the closing conference. The association's key personnel in affected operating areas up to and including senior officers should already have been given the opportunity to respond to specific issues raised throughout the examination, with those responses factored into the examiner's conclusions. Only rarely will some significant fact come to light at the closing conference that changes those conclusions.

The objective of the closing conference is to communicate clearly the examiner's findings and recommendations and to obtain senior management's responses. It is also an opportunity to again impress upon management the seriousness of compliance. If compliance performance has been exemplary, the examiner's job is made much easier, but the need for the association to maintain that exemplary performance level should nonetheless be stressed.

When material deficiencies and violations exist, the examiner must present these diplomatically but firmly, in a manner that leaves no doubt as to the seriousness of the problem. An effective way to present examination findings is to discuss the most serious or difficult deficiencies relating to the compliance management first, then follow with specific regulatory issues.

Nonsubstantive technical violations and other violations found during the examination that were deemed isolated, truly inadvertent, or not indicative of the association's practices need not be discussed during the closing conference. However, notations of these items should be provided to the compliance officer for information purposes during the course of the examination.

The examiner should plan in advance that the discussion of CRA performance will not only highlight deficiencies noted during the examination, but also include specific suggestions of ways in which the association can improve future CRA performance. While these suggestions are not dictates, as management must decide how to handle its CRA responsibilities, encouraging improved performance with appropriate practical advice is consistent with the objectives set out in the CRA statute.

The closing conference should leave management with a firm understanding of what items will appear in the report of examination, and what the overall tone of the report will be. When the closing conference is handled correctly, management should not be surprised by the content of the report when it arrives. The EIC, after stating that the ratings may not be final, should disclose preliminary compliance and CRA ratings with management at the conclusion of the examination, per Regional policy. In this discussion, the EIC must stress that the ratings are preliminary and subject to change until the examination report is issued.

Contact with Board of Directors

Examiners should meet with boards of directors of adversely rated institutions following the conclusion of the examination.

An "adversely rated institution" includes institutions that receive:

- a compliance rating of 4 or 5, or a CRA rating of Needs to Improve or Substantial Noncompliance; or
- a compliance rating of 3 if the rating represents a downgrade from the prior examination. Generally, examiners should meet with boards of directors of all 3 rated institutions; however, Examiners-In-Charge, with the concurrence of the Compliance Exam Manager and/or Assistant Regional Director, have discretion in determining whether such a meeting would be necessary or appropriate in those cases which the 3 rating is not a downgrade from the prior examination.

Because of the value of meetings with boards of directors noted by institution management and the OTS, such meetings with non-adversely rated institutions are encouraged, particularly if the Examiner-In-Charge notes adverse trends, increased risk profile, or other matters which need to be brought to the attention of the board. If no such issues exist, the Examiner-in-Charge should honor any request from management to forgo a meeting with the board.

For non-adversely rated institutions over $1 billion, meetings with the boards of directors should be held, whether or not adverse trends are present. A request from management to not hold a meeting may only be honored after consultation with the Compliance Exam Manager or Assistant Regional Director.

Examiners-In-Charge should discuss this policy with the institutions management during examination entrance interviews, or at other appropriate times during the course of the examination, and schedule a mutually agreeable, convenient date and time to hold a meeting with the board of directors. Generally, it is expected that such meetings would be held in conjunction with an institution's regularly scheduled board meeting following the completion of the examination; however, in some situations it may be convenient to all parties to schedule the meeting during the course of the examination.

Introduction

This section contains instructions for preparing and transmitting a standard Compliance Report of Examination (the "Report" or "CROE") and the public CRA Performance Evaluation.

Some of the significant characteristics of the Report are:

- The report format is all narrative;
- The report is written primarily for the ultimate benefit of the association's board of directors and senior management, thus the overall tone should be consultative and its content designed to educate;
- Only violations deemed to be substantive are to be addressed in the report;
- Violations deemed to be isolated, truly inadvertent, and not indicative of an association's practices should not be discussed in the report, unless a pattern of such practices is identified and deemed appropriate for the Compliance Management section of the CROE;
- The report does not contain an appendix, miscellaneous section, or listing of technical and nonsubstantive violations;
- Report content, with regard to examination findings, strengths, or areas in need of improvement, is to be tailored to each association;
- Presentation of findings should be grouped by statute or regulation and ordered so that the statutes or regulations involving the most critical deficiencies (see discussion later) are addressed first; and
- Within the presentation of findings for a particular statute or regulation, if more than one violation is discussed, findings should again be ordered to begin with the most critical violation.

Structure and Content of the Report

Each report should be structured with the following components, each of which is described in more detail in later paragraphs of this subsection:

- Cover page
- Transmittal sheet
- Director's signature page
- Table of Contents
- Examination Overview
- Compliance Management
- Significant Regulatory Findings
- CRA Assessment

The CRA evaluation for the Public Disclosure contains the findings for the institution's record of performance from the date of the prior compliance examination, through the current compliance examination date.

For ease of identification, every page of the Report should be marked with at least the association's docket number and the examination date.

A report template is available for use by compliance examiners. Following is substantive guidance pertaining to selected sections of the report.

Examination Overview

This section explains the examination methodology, details the scope of the examination, briefly summarizes significant findings with regard to the association's management of its compliance responsibilities and significant regulatory findings, and offers recommendations for future improvement. Under certain circumstances, a description of the association's operations may be appropriate for this section. This section should contain three subsections as detailed and explained below:

Scope

The scope subsection should include the following items:

- Purpose of the examination. Management must understand that our purpose is to evaluate how well the association manages its compliance responsibilities; it is not our role to review, in detail, compliance with all laws and regulations for the purpose of identifying violations. Instead, we rely primarily on management's self-assessment of its compliance function as a basis for determining the degree of transaction testing necessary to evaluate the integrity of management's program.
- Identification of the type of examination (regular, targeted, special).
- Identifications of statutes and regulations covered during the examination and those particular aspects that were reviewed.
- The review period.
- What was reviewed:
  - Policies
  - Procedures
  - Forms
  - Training Materials
  - Internal Audit or Compliance Assessment Workpapers
- Transaction sampling procedures used (do not indicate the actual numbers of various items sampled).
- Outside contacts made in connection with the CRA Assessment. State whether outside contacts were made. If they were not, then this should be considered an unusual limitation in scope, and the reason for this should be explained. Do not identify the individuals interviewed in any section of the report.
- The closing discussion with management. Indicate that findings were presented to the association's managing officer at or near the conclusion of the examination, and consider other relevant details, such as the other members of the management team present. Key attendees at the meeting should be identified by name and title. Also indicate whether examination findings were presented to the association's board of directors.
- The examiner may also state in this subsection whether a listing of all violations noted during the examination was presented to management at the closing conference. Violations and deficiencies considered to be nonsubstantive in nature should not be listed or discussed in the report.
- If the scope was influenced by prior examination reports, internal or external audit reports, consumer complaints, or other special factors, comment on these and the extent that the scope was adjusted as a result of them. Also, if the scope was influenced by the association's operating strategies (i.e. Internet, limited purpose or controlled by a holding company), these strategies should be briefly discussed in this section. Given the examination methodology of focusing on risk-based regulatory issues, it is expected that in virtually all cases, there will be some other considerations affecting the scope.

These items can be presented in any logical order.

Compliance Summary

The Compliance Summary subsection should briefly address the following matters:

- Overall level of compliance (in general terms, both positive and negative factors) and disclosure of the numerical Compliance rating assigned as a result of this examination along with a substantiation of that rating. Do not substantiate the rating by reprinting the definition or profile corresponding to that numerical rating. The rating should be justified using specific language tailored to the association. The profiles can to be used to provide guidance in crafting this justification.

- Major problems (a brief description of the most critical program deficiencies and violations).
- This portion of the report should summarize the major problems and not contain detailed information. The detailed discussion of findings is covered in the Significant Regulatory Findings Section.
- Overall improvement or decline since the last examination.

CRA Assessment Summary:

- CRA Assessment results (in general terms, both positive and negative factors) and disclosure of the descriptive CRA rating assigned as a result of this examination. Do not provide a numerical CRA rating or an assumed numerical equivalent for the descriptive rating. As with the Compliance rating, do not substantiate the rating by repeating the profile for the CRA rating assigned.

Recommendations and Matters Requiring Board Attention

This subsection should contain significant recommendations for future improvement and a summary of required corrective actions. The recommendations should address improvements to the association's management of its compliance responsibilities, compliance program, employee training, internal review systems and CRA performance. Recommendations that relate to significant noncompliance with a particular law or regulation may also be included. It may be useful to note that more detailed recommendations are contained throughout the report under appropriate subject areas. The summary of required corrective actions should list those items addressed in the report that require a specific response from the board; appropriate due dates for corrective actions should also be identified.

Compliance Management

This section contains a detailed discussion of the association's management of its compliance responsibilities. Consistent with the overall purpose of a compliance examination, it is the most critical part of the report. The discussion should focus on management's ability to plan, organize and control its compliance function. This is not an exception-based discussion; it should include both positive and negative factors relating to management and the association's compliance program. The discussion should include management of CRA responsibilities. Comments presented in this section need not be repeated elsewhere in the report but should be appropriately referenced in those sections.

The Compliance Section might serve as an appropriate venue for describing a pattern of compliance irregularities, which taken individually, do not merit inclusion in the Significant Regulatory Findings section.

The following items should be included in this discussion:

- An overall assessment of the effectiveness of management's approach to compliance, its compliance officer and any other individuals with compliance responsibilities;
- A description of the overall structure of the compliance program, detailing responsibilities, reporting relationships, and roles of the board of directors, senior management, compliance officer, internal auditor, and other personnel involved with compliance activities. The names and titles of the individuals with any compliance responsibility should be included;
- Discussion and assessment of resources devoted to compliance matters in terms of time and personnel allocations and whether the commitment is sufficient given the size of the association and the complexity or breadth of its product mix;
- An assessment of the association's system to internally address and put in place corrective measures to cure program deficiencies and particular violations of laws and regulations identified as a result of any internal reviews and previous examinations;
- A description of any internal self-assessment activities done to ascertain compliance and the frequency, adequacy, and effectiveness of those activities;

- A discussion of whether there are adequate plans in place to assure continuity of the compliance program in light of management succession;
- A discussion and assessment of the regulatory knowledge level of the compliance officer(s), the individual's experience, and continuing education;
- Assessment of whether there has been an adequate delegation of authority to the compliance officer to effectuate corrective measures and administer the program; and
- Effectiveness of employee training programs.

Significant Regulatory Findings

The purpose of the section is to identify significant regulatory issues and violations that warrant specific corrective action by management to prevent recurrence. (CRA matters are not discussed in this section but in the CRA Assessment section). This section must identify, in a comprehensive fashion, all substantive violations discovered during the examination. Each individual finding should be accompanied by a discussion of the perceived underlying causes of the violations. The overall tone of the narrative should be positive and consultative, with the objective of leading the reader to agree that correction of the deficiencies is not only possible, but is in the best interest of the association.

The findings should be organized by statute or regulation, with the statutes or regulations involved in the most critical violations or deficiencies addressed first. It is not necessary to begin a new page for each statute or regulation. Only substantive violations or deficiencies are to be described in the report. A general discussion of what constitutes "substantive" appears in the final paragraph of this part.

The discussion of a particular violation should include (as applicable):

- A description of the problem, including the exact citation of the provision violated.
- The extent of the problem, including a projection of the violation's anticipated frequency of occurrence throughout the association based on the sample.
- An estimate of financial risk to the association created by the problem, including projected cost of restitution.
- The underlying cause of the problem, if this can be determined (and the examiner should attempt, with assistance from the association, to identify an underlying cause as part of the examination process).
- Any specific steps to correct the problem discussed with management, and management's response or commitment to action.

Central to the instructions for the report is the differentiation between substantive and nonsubstantive violations. While this differentiation is, in part, relative to the individual circumstances of a specific association, there are some general guidelines. A violation or deficiency may be viewed as substantive if it has any of the following characteristics:

- It is, or results from, a systemic procedural or computational error incorporated into the routine operations of one or more offices, departments, or individual employees of the association;
- It is, or results in, a violation of a person's individual rights under the Fair Housing Act, the Equal Credit Opportunity Act, or the Fair Credit Reporting Act;
- It triggers financial restitution to customers of the association or presents significant risk of suit for money damages, and is not an isolated, inadvertent error that occurred despite reasonable operational controls to prevent such errors;
- It is, or results from, a repeat of violations or deficiencies cited in the previous examination report indicating inadequate management attention to stated supervisory concerns; or
- As a general principle, it is any action or omission that interferes so significantly with the

fundamental purpose of the relevant law or regulation that such purpose is effectively defeated, or is a condition which taken alone or in combination with other violations and deficiencies reflects unfavorably upon the management of an association.

CRA Assessment

The CRA Assessment section of the Report presents only those aspects of the examiner's evaluation of an association's compliance with CRA regulatory requirements, and its performance in helping to meet the credit needs of its community pursuant to CRA examination criteria not suitable for inclusion in the public CRA evaluation. This would include management responses and discussions of financial and other confidential factors having some relevant bearing on CRA performance. This section should supplement the complete assessment of an institution's CRA performance as set forth in the public CRA evaluation and reference the public evaluation. This section should also be used to highlight the substantive CRA violations.

The following information is not suitable for inclusion in the public evaluation and may be addressed in the report, as necessary:

- The names of customers, directors, officers, and employees of the association, and the names of individuals and organizations that have provided information in confidence to the OTS.
- Statements or information, which in the judgment of the OTS are too sensitive or speculative in nature for the public evaluation, such as:
  - — Information potentially harmful to safety and soundness, such as the description or characterization of an association's financial condition.
  - — Information not directly related to CRA performance, such as the details of business plans, where release might adversely affect an association's competitive position.
  - — Information of a purely supervisory nature, such as recommendations for performance improvement and management's responses to criticisms and commitments for corrective action.

Review Worksheet

Appendix A contains a checklist that may assist the examiner or subsequent reviewers to assure proper report preparation.

Structure and Content of the Public CRA Performance Evaluation

The format of the public evaluation follows the provisions of the Community Reinvestment Act that require the agencies to: (1) rate the institution's overall performance in meeting the credit needs of it's entire community; (2) separately present the conclusions for each of the assessment factors the agencies considered in arriving at the rating as well as the facts and data supporting those conclusions for each metropolitan area in which the institution has branches; and, (3) for interstate institutions, rate each state or multistate MSA in which the institution has branches.

The contents of the public evaluation will vary depending on the nature of the institution examined and the assessment method used. Samples of public evaluations for small institutions, large institutions, wholesale and limited purpose institutions, and institutions operating under an approved strategic plan have been prepared by the agencies and are available in the Compliance ROE. These samples provide guidance regarding the structure and contents of the public evaluations. Except for the public evaluation for small institutions, the sample evaluations are structured to meet the requirements that the CRA imposes on public evaluations for interstate institutions. The samples can easily be adjusted to suit the requirements for institutions with branches in only one state, however.

1. Evaluations for institutions with branches in only one state.

   Regardless of the assessment method used, the public evaluation for institutions with branches in only one state must contain the institution's

overall CRA rating and the conclusions for the performance test(s) upon which the rating is based. If the institution has branches in more than one MSA, the public evaluation must present the conclusions for each of the performance tests, along with supporting facts and data, separately for each MSA.

More detailed discussions of each assessment area examined should follow the appropriate MSA presentation.

2. Evaluations for interstate institutions.

   In addition to the institution's overall CRA rating, the public evaluations for interstate institutions must contain ratings for each state and multistate MSA in which the institution has branches. The public evaluation for interstate institutions is, therefore, organized to present the institution's overall rating first, followed by state and multistate MSA ratings. The discussion of the overall institution, state, multistate MSA ratings must discuss the conclusions for the performance test(s) upon with the rating is based.

   Separate MSA presentations for each MSA where the institution has branches should follow the appropriate state presentation. If the institution has branches in non-MSA areas with the state, a discussion of the statewide non-MSA area should also be included. More detailed assessment area discussions follow the applicable MSA and non-MSA discussions.

   Multistate MSA presentations should be followed by discussions of the assessment area(s) within the multistate MSA to the extent that they are smaller than the multistate MSA. If the institution has delineated the multistate MSA as its assessment area, the detailed presentation of the assessment area and the institution's operations and performance should be contained in the discussion of the multistate MSA.

3. Conclusions based on performance tests.

   The statute requires the agencies to present conclusions for each of the "assessment factors" considered in arriving at a rating. Performance tests have replaced assessment factors as the analytical tools for assessing CRA performance. The performance evaluations should reflect the conclusions reached under these performance tests.

   For large, retail institutions, the public evaluation must indicate the conclusions reached under the lending, investment, and service tests. The streamlined assessment method for small institutions focuses on lending performance. However, to the extent that investment and service performance were considered in rating a small institution "Outstanding," the conclusions for each must be placed in the public evaluation. Conclusions for the community development test must be discussed for wholesale and limited purpose institutions. Finally, institutions that operate under an approved strategic plan may be assessed under one or more of the lending, investment, and service tests, depending on the plan. The performance evaluation for those institutions must contain conclusions for the test used in the examination.

4. Hybrid Performance Evaluations.

   Where an institution is examined under more than one assessment method, the examiner should develop a hybrid performance evaluation. The evaluation should state the assessment methods used in the General Information section. In addition, the discussion of the scope should indicate which method was used in each assessment area examined. Finally, discussions of the analysis used under each assessment area presentation should note the applicable assessment method.

5. Use of charts, tables and appendices.

   Charts and tables are encouraged to be used throughout the public evaluation to facilitate discussion of the institution's performance. The inclusion of charts and tables which detract from the evaluation should be avoided. In addition, the inclusion of one or more appendices may facilitate the presentation of information in the public evaluation. For example,

sample Appendix A is a chart describing the scope of the examination and should be used for institutions with numerous assessment areas. Sample Appendix B should be used to summarize the state ratings for interstate institutions. Other charts and tables may be used to assist the reader and amplify the discussion of an institution's performance.

Conclusions must address key aspects of performance, such as those criteria identified in the CRA Rating System. Supporting data and other facts presented should lead an informed reader to the same general conclusions as those reached by the examiner. Individual circumstances dictate the nature and extent of detail required to accomplish the objective of providing adequate support; however, significant aspects of various performance tests require some numerical data to support conclusions. In many situations, numerical data may be illustrative of performance under several other factors as well. Accordingly, you should seek ways in which data used in the CRA assessment process may be more fully incorporated into the written evaluations that are made available to the public. Some examples follow.

- Examiners routinely use loan application registers and HMDA statement tables, as well as the results of management's analysis of those same records, in evaluating CRA performance under performance tests involving the geographic distribution of loans and the origination of certain types of credits. Relevant numbers, dollar amounts, and percentages are typically used as a basis for reaching conclusions under those tests. Consequently, to the extent that data are used to support the conclusions, they should be incorporated into the findings presented under tests dealing with the geographic distribution of those loans within the various segments of a delineated community.

  In some cases, records, such as monthly summaries of lending activity prepared by various lending divisions or origination offices, and credit files are also used to establish the extent of lending activity in general, and within the assessment area in particular. Such data may establish both strengths and weaknesses that are reconciled into one or more conclusions under a particular test. Trend data or comparisons to prior periods may be useful in establishing a certain overall level of performance.

  In other cases, it may be appropriate to reference market-specific cuts of aggregate MSA-level HMDA information to serve as a proxy for loan demand in situations such as when the institution under examination suggests there is no interest in home mortgage lending in its assessment area as an explanation for its low lending activity or lack of lending in certain areas.

  HMDA information may also show significant loan activity in that institution's community by other lenders. In any event, the incorporation of significant data collected or produced during the examination (with sources cited where appropriate) will generally be necessary to support a conclusion concerning loan volumes and lending levels relative to community credit needs.

- Through contact with sources outside of the institution and institution personnel, examiners consider the institution's participation in local community development programs. Institution management generally outlines and provides records of actual involvement. Data generated in this process should be used to support conclusions concerning the institution's level of participation, as long as such data does not improperly name individuals or identify confidential sources or information in the public document. Specific data are often used most effectively to identify number and dollar totals, and to discuss the institution's progress under particular projects and programs offered as examples.

As a general rule, lending and investment data shared with an institution in an examination report as support for the CRA assessment should be included in the public CRA Performance Evaluation, unless their public disclosure are specifically prohibited. Those prohibitions contained in Section 807(c) of the CRA address the privacy of named individuals and information judged too sensitive or speculative in nature. Information considered inap-

propriate for public disclosure includes, but is not limited to, that of a purely supervisory nature, proprietary information such as the details of business plans whose release might adversely affect an institution's competitive position, and the specific identity of borrowers or the recipients of charitable contributions. As always, information such as a description or characterization of an institution's financial condition is inappropriate for public disclosure.

Recommendations to OTS Management

Consistent with the OTS enforcement policy, the EIC is in the best position with regard to the type of formal enforcement action that should be initiated. This recommendation should accompany the draft report of examination that the EIC submits for review.

Issuance of the Compliance Examination Report

The compliance examination report should be issued to the association as soon as practicable after the completion of the on-site portion of the examination. This means that not only the examiner needs to be sensitive to the urgency of time, but supervisory and other review personnel must also bear this in mind. The overall impact and usefulness of an examination report can be directly correlated to the timing of its issuance. Moreover, a lengthy passage of time before issuance of the report makes it appear to an association that any problems noted by the examination team must not be as serious as management was led to believe.

In order to achieve the maximum utility from an examination report and to enhance its impact, it is suggested that the Regional Offices develop internal procedures to process compliance examination reports so their issuance can take place within 30 calendar days after completion of the on-site portion of the examination for institutions with satisfactory or better ratings, and 45 calendar days for those with lower ratings. This time period is considered reasonable based on the nature of the compliance examination report itself. Further, this time period is designed to assure that the report information necessary for an association's management to initiate corrective actions reaches them promptly. Of course, in cases where an examiner has discovered particularly serious violations involving discrimination or restitution to borrowers, the office should consider expediting its internal processing to enable the issuance of an examination report in a shorter time period. In instances where the thrift and compliance examinations are performed concurrently, the office may opt to transmit both completed reports under a single transmittal letter simultaneously.

Issuance of the Public CRA Performance Evaluation

As a result of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), the Community Reinvestment Act was amended to require public disclosure of an institution's CRA rating. It also requires that federal banking regulatory agencies provide a written evaluation of an institution's CRA performance utilizing a four-tiered descriptive rating system. This public CRA Performance Evaluation is to be transmitted to the association at the same time as the compliance examination report. It is advisable to mail the Public Evaluation and the compliance examination report in separate envelopes to help minimize an association's potential confusion as to which document to make public. Preprinted CRA Performance Evaluation covers have been provided to the Regional Offices.

Transmittal Letters

Compliance Examination Reports

A cover letter to the association's board of directors is used to officially transmit the examination report. Use of a supervisory letter is optional. If used, it should not repeat information contained in the examination report. Rather, it should expand on that information and include recommendations for corrective action, unless they are contained in the report.

CRA Performance Evaluations

As the CRA Performance Evaluation is a separate document, distinct from the examination report, which requires action on the part of the association, an explanatory letter which transmits the evaluation is necessary. Appendix B contains a sample letter to be used for the first public evaluation transmitted to an association.

It details the association's responsibilities with respect to making the evaluation publicly available, explains the new CRA regulatory requirements and instructs the association to change its CRA Notice. Appendix C contains a sample letter to be used for transmissions of future evaluations. The substantive difference between the two is that the letter in Appendix C advises the association that it can take the prior public evaluation out of its CRA public files if it so desires.

Checklist for Preparing and Reviewing the Compliance Report of Examination

Report of Compliance Examination

Comprehensive Reporting

__ All narrative?

__ Written for the board of directors? (consultative/educative)

__ Findings grouped properly?

__ All violations and deficiencies presented are substantive?

Examination Overview

Scope:

__ Explain the purpose of a compliance examination?

__ Identify the type of examination?

__ Identify statutes and regulations covered as part of this exam?

__ Identify the review period?

__ Method of review?

__ Outside contacts?

__ Closing conference with management?

__ Scope considerations?

Summary:

__ Overall level of compliance and compliance rating (justified using original language)?

__ Overall level of CRA performance and CRA rating assigned (justified using original language)?

__ Brief description of major problems?

__ Overall improvement or decline since the last exam?

Recommendations:

__ General recommendations relating to management?

__ Compliance program?

__ Employee training?

__ Internal review systems?

Compliance Management

__ Complete assessment of the effectiveness of the compliance program and officer?

__ Description of the structure of the compliance program?

__ Reporting relationships?

__ Delegations of authority?

__ Resources devoted to compliance?

__ Employee training programs?

__ Assessment of knowledge level of compliance officer?

__ Description of internal self-assessment activities?

__ Assessment of approach to effectuating corrective measures?

__ Management succession?

Significant Regulatory Findings

__ Organized by most severe deficiencies?

__ Substantive items only?

__ Violations supported?

__ Citations accurate?

__ Underlying causes presented?

__ Potential impact of violation?

__ Restitution?

CRA Assessment

__ Appropriately limited to matters not suitable for public disclosure?

__ Reference to public evaluation?

__ Violations of 12 CFR 563e?

Public CRA Performance Evaluation Extraction from the CRA Assessment Section of the Report

__ Proper evaluation shell used?

__ Information unsuitable for public disclosure excluded?

__ Adequate support for conclusions and the CRA rating?

Standard transmittal letter for first Performance Evaluation

(Date)

Board of Directors
(Institution Name)
(Institution Address)
(City, State, Zip Code)

Enclosed is your association's first written Community Reinvestment Act (CRA) Performance Evaluation prepared by the Office of Thrift Supervision as of _____ X, 20XX. Pursuant to the provisions of the CRA, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and OTS regulations (12 CFR 563e), this evaluation, and your association's CRA rating as contained therein, must be made available to the public by your association.

This evaluation is being transmitted separately from the Compliance Report of Examination to alleviate the potential for any misunderstanding regarding which document your association must make public. It is the enclosed evaluation that must be publicly available; the Compliance Report of Examination may not be released to the public.

In accordance with 12 CFR 563e, this written CRA Performance Evaluation must be made available to the public within 30 business days of its receipt by your association. The evaluation must be placed in your CRA public file located at your home office and each branch within this 30 business day time frame. The evaluation may not be altered or abridged in any manner.

Your association is invited to prepare a response to the evaluation. The response may be placed in each CRA public file along with the evaluation. In the event your association elects to prepare such a response, please forward a copy of it to this office.

All appropriate personnel, particularly customer contact personnel, need to be aware of the responsibilities that the association has to the public with regard to making this evaluation available. Consequently, we suggest that your association conduct training sessions for those personnel who will typically receive requests from the public for the evaluation and develop internal procedures for handling CRA inquiries, including those pertaining to the evaluation and other contents of the CRA public file.

We strongly encourage the Board of Directors, senior management, and other appropriate personnel to review this document and to take an active interest and role in the CRA activities of your association. Please acknowledge receipt of this evaluation on the form provided and retain a copy of the acknowledgment.

Sincerely,

Enclosure

Standard transmittal letter for subsequent Performance Evaluation

(Date)

Board of Directors
(Institution Name)
(Institution Address)
(City, State, Zip Code)

Enclosed is your association's written Community Reinvestment Act (CRA) Performance Evaluation prepared by the Office of Thrift Supervision as of _____ X, 20XX. Pursuant to the provisions of the CRA and OTS regulations (12 CFR 563e), this evaluation, and your association's CRA rating as contained therein, must be made available to the public by your association.

This evaluation is being transmitted separately from the Compliance Report of Examination to alleviate the potential for any misunderstanding regarding which document your association must make public. It is the enclosed evaluation that must be publicly available; the Compliance Report of Examination may not be released to the public.

In accordance with 12 CFR 563e, this written CRA Performance Evaluation must be made available to the public within 30 business days of its receipt by your association. The evaluation must be placed in your CRA public file located at your home office and each branch within this 30 business day time frame. The evaluation may not be altered or abridged in any manner. At your discretion, previous written CRA Performance Evaluation(s) may be retained with the most recent evaluation in your CRA public file.

Your association is invited to prepare a response to the evaluation. The response may be placed in each CRA public file along with the evaluation. In the event your association elects to prepare such a response, please forward a copy of it to this office.

All appropriate personnel, particularly customer contact personnel, need to be aware of the responsibilities that the association has to the public with regard to making this evaluation available. Consequently, we suggest that your association review internal procedures for handling CRA inquiries, including those pertaining to the evaluation and other contents of the CRA public file.

We strongly encourage the Board of Directors, senior management, and other appropriate personnel to review this document and to take an active interest and role in the CRA activities of your association. Please acknowledge receipt of this evaluation on the form provided and retain a copy of the acknowledgment.

Sincerely,

Enclosure

Introduction

This section is divided into two parts: Part A—Compliance Rating System, and Part B—CRA Rating System. The CRA regulations were revised in May 1995. The new regulations were phased-in until July 1, 1997. Part B contains the rating systems for the new regulation.

Unless the scope of an examination is specifically altered to eliminate one phase (e.g., for a special or targeted examination), each compliance examination will address both (1) general compliance with fair lending, consumer protection, and other public interest laws and regulations, except for the Community Reinvestment Act ("CRA"), and (2) performance under the CRA. Separate ratings are given to these two areas, respectively; although the CRA Rating also takes into account compliance with fair lending regulations.

The instructions in this section should guide the examiner in assigning appropriate Compliance and CRA ratings, and in developing any necessary rating justifications that will appear in the Confidential Section of the examination report. They will also be useful as a reference throughout the examination and report writing process in regard to determining the relative importance of various findings.

Part A—Compliance Rating System

Background

A uniform, interagency compliance rating system was first approved by the Federal Financial Institutions Examination Council (FFIEC) in 1980. During the next year, the system was adopted by each of the Federal agencies represented on the Council, with the exception of the OTS which at the time elected to continue its practice of including consumer compliance as a component of its overall CAMELS rating. With the OTS's decision to separate consumer compliance examination reports from safety and soundness examination reports, it is appropriate that the ratings also be separated. Therefore, the OTS has adopted a Compliance Rating System substantially equivalent to the FFIEC-approved interagency compliance rating system.

The OTS Compliance Rating System differs from the interagency version primarily in terms of scope. The range of regulations covered under the term "Compliance" by the OTS is somewhat broader than was contemplated, at least initially, by the FFIEC. The FFIEC rating system was designed to reflect, in a comprehensive and uniform fashion, the nature and extent of an association's compliance with civil rights and consumer protection statutes and regulations. The OTS's implementation expands that coverage to encompass compliance with a number of other public interest regulations. Among these are the Bank Secrecy Act, Bank Protection Act, Equal Employment Opportunity Act, economic sanctions, and advertising.

Since associations receive separate Community Reinvestment Act (CRA) ratings [see Part B of this Section], the Compliance Rating System does not include or take into account an association's performance record with respect to the CRA statute and OTS's implementing regulations. Note also that an association's performance in the area of trust activities, often referred to as part of the "compliance" arena, is the subject of a separate examination report and rating. For additional information, refer to OTS's Trust Activities Handbook.

The Compliance Rating System is based upon a scale of "1" through "5," in increasing order of supervisory concern. A rating of "1" indicates excellence, while a rating of "5" represents the lowest, most critically deficient level of performance and the highest level of supervisory concern. The Compliance Rating System is a single-value rating system. The single rating value assigned reflects overall compliance performance and must be substantiated by the contents of the Report of Examination and the examination workpapers. Characteristics of the five Compliance Ratings available to the examiner are described in greater detail in subsequent paragraphs.

In assigning a Compliance Rating, all factors relevant to compliance with civil rights, consumer protection and other public interest statutes and regulations must be identified and evaluated. In general, these factors include the commitment of management, as evidenced by its ability and willingness to maintain compliance; the competence of management, as evidenced by the adequacy of operating systems, including internal procedures, controls and audits designed to ensure compliance; and the extent of actual present compliance as a measure of the effectiveness of management's efforts. Other factors unique to specific situations will require attention if the examiner determines they impact significantly upon the overall effectiveness of an association's compliance efforts.

The primary purpose of the Compliance Rating System is to help identify those associations whose compliance with civil rights, consumer protection and other public interest statutes and regulations displays weaknesses requiring special supervisory attention and is cause for more than a normal degree of supervisory concern. To accomplish this objective, the rating system identifies a central category of associations that have compliance deficiencies that warrant more than normal supervisory concern. These associations are not deemed to present a significant risk of financial or other harm to consumers, but do require a higher than normal level of supervisory attention. Associations in this category are generally rated "3." Associations displaying satisfactory and exceptional performance in compliance matters may be rated "2" or "1," respectively. Conversely, associations whose weaknesses are so severe as to represent, in essence, a substantial or general disregard for the law may be, depending upon the nature and degree of their weaknesses, rated "4" or "5."

The rating categories adopted by the OTS for its Compliance Rating System are substantially identical to the categories adopted by other regulators under the FFIEC-approved system. The uniform identification of associations giving cause for more than a normal degree of supervisory concern will help ensure that:

- The degree of supervisory attention and the type of supervisory response are based upon the severity and nature of the association's problems;
- Supervisory attention and action are, to the extent possible, administered uniformly and consistently, regardless of the type of association or the identity of the regulatory agency; and
- Appropriate supervisory action is taken with respect to those associations whose compliance problems entail the greatest potential for financial or other harm to consumers and the public generally.

In assigning ratings under this system, it is important to recognize that all the attributes under each rating may not necessarily apply to each association. Further, the rating system is not intended to automatically "pigeon-hole" associations into certain categories. Examiners should understand that there is flexibility in this rating system. For example, the profiles for associations rated "1" or "2" indicate that the association has a written compliance program. This means that associations that typically fall in the "1" or "2" categories typically have written compliance programs. The absence of a written compliance program should not, in and of itself, automatically place the association in the "3" category. However, the examiner would certainly want to encourage an association that has a good compliance program to commit it to writing. The rating system also indicates that the presence of restitution would require a rating of "3" or lower. Generally this is the case; however, if all other aspects of an association's compliance performance are at a satisfactory or better level, and management either completed or initiated restitution to affected borrowers during the examination, or promised to take appropriate corrective action in a timely manner, a rating of "2" could be assigned if properly justified and supported by the examination findings and explained in the confidential section of the report.

Five-Point Compliance Rating Scale

Compliance Ratings are defined and distinguished as follows:

Rating 1

An association in this category is in a strong compliance position. Management is clearly committed to and capable of, and staff is sufficient for, effectuating compliance. A qualified compliance officer or other specified personnel appropriate for the association have been given responsibility for compliance assurance, either overall or for specific areas of operations. An effective compliance program, including an efficient system of internal procedures and controls, has been reduced to writing and successfully implemented. The association provides adequate training for its employees. Changes in relevant statutes and regulations are promptly reflected in the association's policies, procedures and compliance training. If any violations are noted, they relate to relatively minor deficiencies in forms or practices that are easily corrected. There is no evidence of discriminatory acts, practices or policies; reimbursable violations; or uncorrected practices resulting in repetition of previously cited violations. Violations and deficiencies are promptly corrected by management. As a result, the association gives no cause for supervisory concern.

Rating 2

An association in this category is in a generally strong compliance position. Management is deemed capable of and committed to administering an effective compliance program. Appropriate personnel have been identified as responsible for compliance assurance and the compliance program reduced to writing. Compliance training is generally satisfactory and conducted routinely to keep staff informed of current requirements. Although the compliance program includes a system of internal operating procedures and controls to ensure compliance, violations have nonetheless occurred. These violations, however, involve technical aspects of the law or result from oversight on the part of operating personnel. Modifications of the association's compliance and training programs and/or the establishment of additional review/audit procedures should eliminate most of the deficiencies resulting in these violations. There is no evidence of discriminatory acts, practices or policies; reimbursable violations; or uncorrected practices resulting in a repetition of previously cited violations.

Rating 3

An association in this category is in a less than satisfactory compliance position. It is a cause for more than normal supervisory concern and requires immediate supervision to remedy deficiencies. Violations, while predominately technical in nature, may be numerous. In addition, previously identified practices resulting in violations may remain uncorrected. However, overcharges, if present, involve only a few consumers and are minimal in amount; and there is no evidence of discriminatory policies or practices. If one or more technical discriminatory acts are found, they are clearly isolated instances inconsistent with the policies and practices of the association and not indicative of a pattern of discrimination. Although management may have the ability to effectuate compliance, increased commitment and effort are necessary. The numerous violations discovered are an indication that management has not devoted sufficient time and attention to its compliance responsibilities. Operating procedures and controls have not proven effective and require strengthening. This may be accomplished by, among other things, designating a compliance officer, and developing and implementing a more comprehensive, effective compliance program and training effort. By identifying an association with marginal compliance early, additional supervisory measures may be employed to minimize future violations and prevent further deterioration in the association's less than satisfactory compliance position.

Rating 4

An association in this category requires close supervisory attention and monitoring to promptly correct the serious compliance problems disclosed. Numerous substantive as well as technical violations of one or more statutes or regulations are present. Overcharges, if any, affect a significant number of consumers and involve a substantial amount of money. Often, practices resulting in

violations and cited at previous examinations remain uncorrected. Discriminatory acts, practices or policies may be in evidence. Clearly, management has not exerted sufficient effort to ensure compliance. Its attitude may indicate a lack of interest in administering an effective compliance program which may have contributed to the seriousness of the association's compliance problems. Internal procedures and controls have not proven effective and are seriously deficient. Staff training will generally be found non-existent or haphazard. Prompt action on the part of the supervisory agency may enable the association to correct its deficiencies and improve its compliance position.

Rating 5

An association in this category is in need of the strongest supervisory attention and monitoring. It is substantially in noncompliance with several of the civil rights, consumer and public interest statutes and regulations. The severity of its noncompliance creates legal and financial exposure of significant risk to the association. Management has demonstrated its unwillingness or inability to operate within the scope of these statutes and regulations. Previous efforts on the part of the regulatory authority to obtain voluntary compliance have been unproductive. Discrimination, substantial overcharges or practices resulting in serious repeat violations are present.

Compliance Rating Assessment Guidelines

The Compliance Rating scale has been presented in a narrative format describing the level of compliance for each of the five ratings. When assigning a rating, the examiner should choose the category whose description best reflects the association's overall compliance position. In many, if not all, cases an association's compliance posture may not reflect all the factors comprising a single rating category. Consequently, it is important that the extent and types of problems discussed in the examination report support the examiner's rating. The examiner's rating narrative, in the Confidential Section of the examination report, must draw together the import of the various comments presented in the Summary and Findings sections, forming a conclusion that translates into the numerical Compliance Rating to be assigned.

The association's compliance record and the internal routines and controls used to prevent violations are directly related to management and to the emphasis management places on compliance matters. Therefore, the examiner's rating narrative should commence with a discussion of management. The narrative should then briefly discuss the problem areas within the association, why the violations occurred, including deficiencies in internal routines and control procedures, and management's proposed corrections. Other matters pertinent to the examination not appropriate for the open report, as well as the names of persons in attendance at the final discussion or board meetings, may be included in the confidential section.

When rating the association, the examiner should consider and address the topics listed below. A more detailed discussion of these subjects follows.

(a) Management

- — ability
- — knowledge
- — attitude
- — succession

(b) Compliance

- — nature and extent of violations
- — repeat violations
- — discriminatory practices and procedures
- — overcharges

(c) Internal compliance program

- — designation of compliance responsibilities
- — audit/review procedures
- — training programs

Assessment Guideline Questions

The following questions are meant solely as guidelines for the examiner. Answers to these questions,

as well as responses to the examiner's checklists, should aid the examiner in determining the rating and targeting areas for discussion.

Management

Management is the most important component of a well-run organization. Operation of a successful compliance program depends largely upon management's ability, knowledge, and support. Therefore, an analysis of management is essential in determining a rating. When evaluating management, the following should be considered:

Ability:

- Is management technically competent? Does management exert the leadership and administrative abilities necessary to promote compliance with the laws?
- Is management able to interpret (understand) and implement the relevant laws and revisions to the laws? Or, does management rely heavily on the examiners to supply guidance in understanding the laws?
- Does management have the capability of operating the association within the scope of the regulations? Or, are the problem areas cited in the examination report beyond management's capabilities?

Knowledge:

- Is management familiar with the various civil rights, consumer, and public interest laws and regulations? The content of policy, procedures and training manuals, and the number and type of violations found in the association, indicate management's knowledge of the laws.
- Does management keep abreast of changes in the laws and regulations? Are training programs instituted to ensure that the association's staff is informed of the changes?

Attitude:

- Does management have a positive attitude toward regulatory compliance?
- Once identified, are causes of violations promptly corrected, or are there many repeat violations?
- Does management emphasize the importance of compliance with civil rights, consumer and other public interest laws? Designation of appropriate staff with specific responsibilities for compliance assurance, prompt identification and correction of violations and causes of violations, expressed willingness to comply with the regulations, and general responsiveness to supervisory concerns are all indicative of a positive attitude toward compliance.

Management Succession:

- Is there provision for adequate management succession? Although its importance is not limited to compliance matters, management's provision for succession indicates a long range perspective of the association's future that generally will include a commitment to comply with applicable laws and regulations.

Compliance with the Laws

Violations are indicative of the level of compliance within the association. The number and types of violations signal the extent of an association's problems and are therefore of paramount importance in determining a rating. When rating the association, the examiner should consider the following:

Nature and extent of violations:

- Are the violations primarily technical in nature and easily corrected? Examples include: failing to include the telephone number of a "required provider" on a good faith estimate; failing to display an "Equal Housing Lender" poster in a branch office; providing the wrong address on adverse action notices; omitting the OTS address in a Community Reinvestment Act Notice; failing to cross-out old early withdrawal penalty notices placed on the back of CD forms when new penalty notices are given to the consumer.
- Are the violations concerned with practices and procedures that may be more difficult to

correct? These violations may have a greater direct impact on the consumer or may subject the association to liability. For example, the failure to establish separate credit histories or the failure to give rescission notices may directly harm the consumer.

- What is the cause of the violations? Are they the result of established practices and procedures? Is a particular individual primarily responsible?
- How widespread are the violations? Are they restricted to isolated instances?
- Are the violations inadvertent or willful? A violation committed in intentional adherence to an established procedure that is itself in error may be considered inadvertent if (1) creation of the procedural error was inadvertent and (2) the violation is not obvious in its execution and therefore may be carried out with no intention to violate the law.

Types of violations:

- Are the violations substantive?
- Are substantial overcharges and reimbursements involved?
- Are discriminatory practices involved?
- Are there any repeat violations reflecting a continuing policy or practice noted in previous examination reports yet still uncorrected? How often were the violations repeated?
- Are there many violations of the same type, thus constituting a "pattern" of noncompliance?
- What are management's plans for correction? Are these plans likely to correct the cause(s) of the violations?

Internal Compliance Program

Management is directly responsible for the establishment of an effective compliance program. This program will include the designation of compliance responsibilities, assure proper operating procedures and policies, establish a system of internal routines and controls. Such a system may prevent many compliance violations and can usually be implemented with little cost to the association. Assistance to member associations wishing to establish or evaluate their internal compliance programs has been provided by the OTS in the handbook, *Compliance: A Self-Assessment Guide.*

When evaluating the effectiveness of an association's program, the examiner should focus on its results rather than its specific structure, which may be quite varied between associations. The following areas should be considered when evaluating internal routines and controls:

Designation of compliance responsibilities:

- Does the association have a compliance officer?
- If no compliance officer has been formally designated, have specific responsibilities for compliance assurance been assigned to other appropriate members of the staff?
- Is the designated person(s) knowledgeable about the civil rights, consumer and public interest laws? How much time does this person(s) devote to compliance assurance? How much autonomy does this person(s) possess?
- If a compliance officer has been designated, has the officer been granted sufficient authority and resources to effectively carry out the functions assigned?

Audit/review procedures:

- Does the association's audit program include compliance test checks? Are they adequate?
- Does the legal counsel review forms and procedures for compliance?
- Does the association employ audit/review procedures in its daily work? Does someone recheck forms and calculations for accuracy? Are the files checked to make sure that all necessary forms are complete and that the customer has been given all the correct information?

Training programs:

- Does the association have an adequate training program? Does the program include training regarding changes in the laws and regulations? Are specific persons responsible for assuring that the training materials are complete and up to date?
- Does the program encompass enough employees or is it limited to only a few employees?

Part B-CRA Rating Systems for the Revised CRA Regulation

Introduction

The Federal financial regulatory agencies revised the regulations implementing the CRA in May 1995. The regulations became effective on January 1, 1996, but were not fully implemented until July 1, 1997. The new regulations set out four separate and distinct CRA assessment methods: the lending, investment and service tests for large, retail institutions; the streamlined examination method for small institutions; the community development test for wholesale and limited purpose institutions; and the strategic plan option for all institutions.

As of January 1, 1996, the new regulatory provisions applied to small institutions (i.e., those with less than $250 million in assets or part of a holding company with total banking and thrift assets of less than $1 million). In addition, large, retail institutions may opt to be assessed under the new regulations if they provide the data required under 563e.42. Finally, as of January 1, 1996, institutions may file requests for designation as wholesale or limited purpose institutions or submit strategic plans for agency approval.

Under the revised CRA regulations, an institution will be assigned one of the four assigned ratings required Section 807 of the CRA:

1. "Outstanding record of meeting community credit needs."
2. "Satisfactory record of meeting community credit needs."
3. "Needs to improve record of meeting community credit needs."
4. "Substantial noncompliance in meeting community credit needs."

An institution's performance under the tests and standards in the rule is judged in the context of information about the institution, its community, its competitors, and its peers. Among the factors to be evaluated in an examination are the economic and demographic characteristics of the assessment area(s), the lending, investment and service opportunities in the assessment area(s), the institution's product offerings and business strategy, the institution's capacity and constraints, the prior performance of the institution and, in appropriate circumstances, the performance of similarly situated institutions, and other relevant information. An institution's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The institution's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as described, below. In addition, the OTS adjusts the evaluation of an institution's performance under the applicable assessment method in accordance with § 563e.21, and § 563e.28, which provide for adjustments on the basis of evidence of discriminatory or other illegal credit practices.

Institutions Evaluated under the Lending, Investment and Service Tests

Retail institutions that are evaluated under the lending, investment and service tests will be assigned a rating based upon the component tests and a composite rating matrix that implements several rating principles, with adjustment for any evidence of discrimination. The lending, investment and service tests are evaluated using a level component rating system. Examiners will assign ratings of "outstanding," "high satisfactory," "low satisfactory," "needs to improve," or "substantial noncompliance" to each of the three component tests, reflecting the institution's lending, investment and service performance. This level system will permit OTS, thrifts and their customers to recognize the

stronger performances on the lending, investment and service tests of those institutions that are doing a very good, but not quite outstanding, job of helping to meet the credit needs of their communities.

Lending Performance Rating

The OTS assigns each institution's lending performance one of the five following ratings.

- Outstanding. The OTS rates an institution's lending performance "outstanding" if, in general, it demonstrates:
  - — Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm and consumer loans, if applicable, in its assessment area(s);
  - — A substantial majority of its loans are made in its assessment area(s);
  - — An excellent geographic distribution of loans in its assessment area(s);
  - — An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
  - — An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
  - — Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and
  - — It is a leader in making community development loans.
- High satisfactory. The OTS rates an institution's lending performance "high satisfactory" if, in general, it demonstrates:
  - — Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm and consumer loans, if applicable, in its assessment area(s);
  - — A high percentage of its loans are made in its assessment area(s);
  - — A good geographic distribution of loans in its assessment area(s);
  - — A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
  - — A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
  - — Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and
  - — It has made a relatively high level of community development loans.
- Low satisfactory. The OTS rates an institution's lending performance "low satisfactory" if, in general, it demonstrates:
  - — Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm and consumer loans, if applicable, in its assessment area(s);
  - — An adequate percentage of its loans are made in its assessment area(s);

- An adequate geographic distribution of loans in its assessment area(s);
- An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
- An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
- Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and
- It has made an adequate level of community development loans.

- Needs to improve. The OTS rates an institution's lending performance "needs to improve" if, in general, it demonstrates:
  - Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
  - A small percentage of its loans are made in its assessment area(s);
  - A poor geographic distribution of loans, particularly to low- or moderate- income geographies, in its assessment area(s);
  - A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
  - A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
  - Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and
  - It has made a low level of community development loans.
- Substantial noncompliance. The OTS rates an institution's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:
  - A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm and consumer loans, if applicable, in its assessment area(s);
  - A very small percentage of its loans are made in its assessment area(s);
  - A very poor geographic distribution of loans, particularly to low- or moderate- income geographies, in its assessment area(s);
  - A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
  - A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
  - No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

— It has made few, if any, community development loans.

Investment Performance Rating

The OTS assigns each institution's investment performance one of the five following ratings.

- Outstanding. The OTS rates a institution's investment performance "outstanding" if, in general, it demonstrates:
  - — An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;
  - — Extensive use of innovative or complex qualified investments; and
  - — Excellent responsiveness to credit and community development needs.
- High satisfactory. The OTS rates a institution's investment performance "high satisfactory" if, in general, it demonstrates:
  - — A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;
  - — Significant use of innovative or complex qualified investments; and
  - — Good responsiveness to credit and community development needs.
- Low satisfactory. The OTS rates an institution's investment performance "low satisfactory" if, in general, it demonstrates:
  - — An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;
  - — Occasional use of innovative or complex qualified investments; and
  - — Adequate responsiveness to credit and community development needs.
- Needs to improve. The OTS rates a institution's investment performance "needs to improve" if, in general, it demonstrates:
  - — A poor level of qualified investments, particularly those that are not routinely provided by private investors;
  - — Rare use of innovative or complex qualified investments; and
  - — Poor responsiveness to credit and community development needs.
- Substantial noncompliance. The OTS rates a institution's investment performance as being in "substantial noncompliance" if, in general, it demonstrates:
  - — (A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;
  - — (B) No use of innovative or complex qualified investments; and
  - — (C) Very poor responsiveness to credit and community development needs.

Service Performance Rating

The OTS assigns each institution's service performance one of the five following ratings.

- Outstanding. The OTS rates an institution's service performance "outstanding" if, in general, the institution demonstrates:
  - — Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);
  - — To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;
  - — Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s),

particularly low- or moderate- income geographies or low- or moderate-income individuals; and

— It is a leader in providing community development services.

- High satisfactory. The OTS rates an institution's service performance "high satisfactory" if, in general, the bank demonstrates:

  — Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

  — To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

  — Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate- income geographies and low- and moderate-income individuals; and

  — It provides a relatively high level of community development services.

- Low satisfactory. The OTS rates an institution's service performance "low satisfactory" if, in general, the institution demonstrates:

  — Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

  — To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

  — Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate- income geographies and low- and moderate-income individuals; and

  — It provides an adequate level of community development services.

- Needs to improve. The OTS rates an institution's service performance "needs to improve" if, in general, the institution demonstrates:

  — Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

  — To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate- income individuals;

  — Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

  — It provides a limited level of community development services.

- Substantial noncompliance. The OTS rates an institution's service performance as being in "substantial noncompliance" if, in general, the institution demonstrates:

  — Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

  — To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

  — Its services (including, where appropriate, business hours) vary in a way that signifi-

cantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

— It provides few, if any, community development services.

Composite Rating

The OTS assigns each institution a preliminary composite rating based on the numerical values assigned to the component test ratings using the table, below:

Component Lending Service Investment Test Ratings

Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Non-compliance	0	0	0

A preliminary composite rating for the institution is assigned by totaling the numerical values of the component test ratings under the lending, investment and service tests and referring to the chart, below.

Points	Composite Assigned Rating
20 or over	Outstanding
11 through 19	Satisfactory
5 through 10	Needs to Improve
0 through 4	Substantial Noncompliance

Wholesale or Limited Purpose Institutions

The OTS assigns each wholesale or limited purpose institution's community development performance one of the four following ratings.

- Outstanding. The OTS rates a wholesale or limited purpose institution's community development performance "outstanding" if, in general, it demonstrates:
  - — A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
  - — Extensive use of innovative or complex qualified investments, community development loans or community development services; and
  - — Excellent responsiveness to credit and community development needs in its assessment area(s).
- Satisfactory. The OTS rates a wholesale or limited purpose institution's community development performance "satisfactory" if, in general, it demonstrates:
  - — An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
  - — Occasional use of innovative or complex qualified investments, community development loans or community development services; and
  - — Adequate responsiveness to credit and community development needs in its assessment area(s).
- Needs to improve. The OTS rates a wholesale or limited purpose institution's community development performance as "needs to improve" if, in general, it demonstrates:
  - — A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
  - — Rare use of innovative or complex qualified investments, community development loans, or community development services; and
  - — Poor responsiveness to credit and community development needs in its assessment area(s).

- Substantial noncompliance. The OTS rates a wholesale or limited purpose institution's community development performance in "substantial noncompliance" if, in general, it demonstrates:
  - — Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
  - — No use of innovative or complex qualified investments, community development loans, or community development services; and
  - — Very poor responsiveness to credit and community development needs in its assessment area(s).

Institutions Evaluated under the Small Institution Performance Standards

The OTS rates the performance of each institution evaluated under the small institution performance standards as follows.

- Eligibility for a satisfactory rating. The OTS rates a institution's performance "SATsfactory" if, in general, the institution demonstrates:
  - — A reasonable loan-to-deposit ratio (considering seasonal variations) given the institution's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;
  - — A majority of its loans and, as appropriate, other lending-related activities are in its assessment area(s);
  - — A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the institution's assessment area(s);
  - — A record of taking appropriate action, as warranted, in response to written complaints, if any, about the institution's performance in helping to meet the credit needs of its assessment area(s); and
  - — A reasonable geographic distribution of loans given the institution's assessment area(s).
- Eligibility for an outstanding rating. An institution that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether a institution's performance is "outstanding," the OTS considers the extent to which the institution exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).
- Needs to improve or substantial noncompliance ratings. An institution also may receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

Strategic Plan Assessment and Rating

- Satisfactory goals. The OTS approves as "satisfactory" measurable goals that adequately help to meet the credit needs of the institution's assessment area(s).
- Outstanding goals. If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as "satisfactory," the OTS will approve those goals as "outstanding."
- Rating. The OTS assesses the performance of a institution operating under an approved plan

to determine if the institution has met its plan goals:

— If the institution substantially achieves its plan goals for a satisfactory rating, the OTS will rate the institution's performance under the plan as "satisfactory."

— If the institution exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the OTS will rate the institution's performance under the plan as "outstanding."

— If the institution fails to meet substantially its plan goals for a satisfactory rating, the OTS will rate the bank as either "needs to improve" or "substantial noncompliance," depending on the extent to which it falls short of its plan goals, unless the institution elected in its plan to be rated otherwise, as provided in § 563e.27(f)(4).

Introduction[1]

Meetings between regulatory staff and the board of directors—the individuals ultimately responsible for an institution's affairs—serve a variety of functions. They provide opportunity for interaction, and they facilitate long-term communication, which is especially important when the regulatory process reveals significant adverse information. They help to keep the directors and regulators mutually informed by providing them an opportunity to discuss together:

- The examination process and findings;
- The institution, its business strategy and plans;
- The general financial environment; and
- Industry-related concerns.

They give regulators an opportunity to obtain commitments from the board for corrective action.

Meetings with boards of directors are distinct from management meetings, also known as *exit conferences, closing conferences, or exit interviews*, near the end of an examination. Management meetings (see Compliance Activities Regulatory Handbook Section 120, Reaching Conclusions and Closing the Examination) are held with members of the executive management team to review technical and overall examination findings and to obtain commitments for corrective action. The examiner in charge (EIC) should notify management of all examination-related items slated for discussion with the board of directors, except for findings that warrant recommendations for removal of management. For further discussion regarding management and the directors' meetings in connection with compliance examinations, refer to the Compliance Activities Handbook Section 120. Meetings should be conducted in the case of associations rated "4" or "5" for compliance or "Needs to Improve" or "Substantial Noncompliance" for CRA. Meetings should also be conducted for institutions with a compliance rating of 3 if the rating represents a downdrade from the prior examination. Generally, examiners should meet with boards of directors of all 3 rated institutions; however, Examiners-in-Charge, with the concurrence of the Compliance Exam Manager and/or Assistant Regional Director, have discretion in determining whether such a meeting would be necessary or appropriate in those cases which the 3 rating is not a downgrade from the prior examination.

Because of the value of meetings with boards of directors noted by institution management and the OTS, such meetings with non-adversely rated institutions are encouraged, particularly if the EIC notes adverse trends, increased risk profile, or other matters which need to be brought to the attention of the board. If no such issues exist, the EIC should honor any request from management to forgo a meeting with the board.

For non-adversely rated institutions over $1 billion, meetings with the boards of directors should be held, whether or not adverse trends are present. A request from management to not hold a meeting may only be honored after consultation with the Compliance Exam Manager or Assistant Regional Director.

Examiners-in-Charge should discuss this policy with the institutions management during examination entrance interviews, or at other appropriate times during the course of the examination, and schedule a mutually agreeable, convenient date and time to hold a meeting with the board of directors. Generally, it is expected that such meetings would be held in conjunction with an institution's regularly scheduled board meeting following the completion of the examination; however, in some situations it may be convenient to all parties to schedule the meeting during the course of the examination.

[1] This section is substantially identical to Thrift Activities Handbook, Section 320. Some changes have been made to relate the material to compliance examinations.

Types of Meetings

There are two primary types of meetings between regulators and boards of directors: regular (examination-related) and special (not primarily for presenting examination findings). However, any meeting may serve multiple purposes. For example, a regular meeting can be used to get acquainted with the board of directors and enhance communication as well as present examination findings.

Regular Meetings

Regular meetings may result from regular, special, or targeted examinations. Their primary purposes are to present and discuss examination findings and, if necessary, reach agreement on a plan of corrective action. A secondary purpose may be to gather information regarding a new function or plans for the institution. These meetings may also be used to enhance the directors' understanding of the regulatory process and to establish rapport and build lines of communication between regulators and directors.

Regular meetings should normally be held subsequent to the examination, although they may be held during the last week of the examination if the examination results have been discussed with the institution's management. They may also be held in conjunction with the board's next regularly scheduled meeting or at another mutually agreed-upon date. However, whenever possible, they should not be later than 60 days after the examination completion date. When scheduling the meeting, regulators may consider whether receiving a copy of the report of examination (ROE) prior to the meeting would benefit the directors.

The following issues, which warrant the board of directors' attention, are among those that should be considered for the meeting agenda:

- A comparison of the institution's compliance policies, practices, and reporting systems with those one would expect to find in a well-managed institution of comparable size and offering similar services;
- Senior management's actions to correct deficiencies in compliance policies, practices, and reporting systems;
- The institution's system of internal control, including its program of internal audit;
- The extent to which senior management and directors are receiving information needed to manage or oversee the institution effectively;
- Any significant concerns or observations regarding the quality of earnings;
- Management's long-term plans;
- Depth in management personnel; and
- The board's involvement in the institution's affairs.

Regulatory staff should be prepared to discuss methods for correcting deficiencies but should not direct the course of action to be taken. If there are no major deficiencies, regulatory staff can inform the board of directors of the general condition of the institution and obtain the board's view on its future operations. The directors should be encouraged to discuss any matters of interest.

Special Meetings

Special meetings may be conducted for the following reasons:

- To effect a supervisory action, such as a supervisory agreement or cease-and-desist order;
- To gather information in order to act on a proposal, application, or request by the institution;
- To discuss an institution's progress in achieving the interim goals of a corrective action plan;
- To get acquainted, following a change in the composition of the directorate or a change in the regulatory staff assigned to the institution; or
- In response to a request by the directorate to meet with regulatory staff.

Meeting Preparation, Presentation, and Documentation

To ensure a successful meeting, regulatory staff should prepare thoroughly for any meeting with the directorate, be professional in conducting the meeting, and prepare sufficient documentation to ensure appropriate follow-up. When appropriate, regulators should use the following guidelines:

- Preparation
  - — Ensure that scheduling and selection of attendees facilitates the meeting's goal (see the discussion below on participation);
  - — Choose attendees and determine the responsibilities of each;
  - — Select a chairperson;
  - — Determine a time and location;
  - — Develop an agenda (refer to the discussion below);
  - — Notify all participants of the meeting and its purpose;
  - — Meet with regulatory staff participants to discuss the agenda and any other related issues;
  - — Prepare and organize supporting data, including comparative figures and ratios that indicate trends and graphs to illustrate significant points or trends; and
  - — Prepare any handouts or overheads and arrange for their presentation.
- Presentation
  - — Conduct the meeting in a dignified, professional and objective fashion;
  - — Present the agenda (refer to discussion below) and follow it within reason;
  - — Remember that the effectiveness of the meeting is directly related to the extent communication is established and creditability maintained;
  - — Encourage directors' involvement and questions;
  - — Do not attempt to answer questions without being able to offer complete and accurate information. When unable to do so, inform the directors that they will receive a response from the regional office or the Office of Thrift Supervision (OTS) — Washington and then forward the question appropriately for a timely reply; and
  - — Obtain commitments for corrective action from the board of directors, if appropriate.
- Documentation
  - — Evaluate and document the results of the meeting (refer to the discussion below).

Participation

Meetings should be held with the entire board to ensure that all directors are aware of regulatory findings and commitments to correct deficiencies. If all directors cannot attend, regulatory staff may meet with a group, such as the audit, examining, or executive committee, as long as:

- Outside directors are represented;
- A meeting with the full board is not critical (for example, if no material or adverse findings are noted); and
- A meeting with less than the full board is compatible with the goals and circumstances of the meeting.

Honorary directors may attend meetings with regulatory staff to participate in decision making and discuss examinations. However, honorary directors may not vote. Any person or organization connected with the institution, auditor, or holding company representative may attend the meeting upon board resolution. However, regulatory staff may excuse such people if appropriate. As a general rule, state supervisory authorities should attend meetings with the boards of directors of state-chartered institutions.

Examiners-in-Charge should participate in regular meetings with the board of directors. This provides them with the opportunity to discuss the strengths and weaknesses noted during the examination and to answer any questions posed by management. In some cases, it may be advantageous for the EIC to attend special meetings as well.

Agenda

To ensure that meetings with boards of directors are clear, concise and orderly, regulatory staff should prepare a detailed outline of the topics for discussion. The following sample outline is a starting point. It may be used as a guide for regular meetings, but should be considered neither all-inclusive nor limiting as to content or format.

Sample Agenda Outline

- Introductory remarks by regional office representative
  - — Introductions
  - — OTS policy regarding meeting with the board
  - — Purpose of meeting
  - — Type of examination, scope, and other limitations
- Presentation of examination findings
  - — Results of the examination of the association
  - — Management
  - — Internal controls and audit coverage
  - — Adequacy and effectiveness of policies and procedures
  - — Adequacy and accuracy of association's reporting systems
  - — Compliance systems
  - — Violations of law
  - — Supervision by board of directors
- Corrective action (after discussion with appropriate regulatory staff)
  - — Summary of problems
  - — Board commitments
- Other matters
- Questions from the board of directors
- Overall conclusions

Documentation

After the meeting, regulatory staff should prepare a post-meeting memorandum to formally record the meeting results, date, time, location and participants' names and titles. The memorandum should also describe the items discussed, the board of directors' reactions to those items and any commitments for corrective action. If the board has promised corrective action, or if otherwise appropriate, the regulator should send the memorandum to the board for comment/concur-rence.

At the conclusion of any meeting conducted by the board of directors (rather than the regulators), regulatory staff should ask for a copy of the minutes. Upon receipt, regulatory staff should review the minutes for accuracy.

A copy of the post-meeting memorandum or minutes, along with the agenda from the meeting, should be filed in the appropriate supervisory file and the continuing examination file.

Introduction[1]

It is the policy of the Office of Thrift Supervision (OTS) to fully use its statutory authorities to take prompt and vigorous enforcement action where warranted to ensure the safety and soundness of thrift institutions. Proper use of the OTS's formal enforcement powers as well as informal supervisory responses is critical in helping the OTS meet its functional responsibilities: ensuring the safety and soundness of the thrift industry, ensuring that all institutions comply with laws and regulations, and maintaining the soundness of the Savings Association Insurance Fund (SAIF). To enforce its powers, the OTS may take action against thrift institutions, thrift holding companies, service corporations, other affiliates or institution-affiliated parties. At a minimum, it is OTS policy that institutions with a composite rating of 4 or 5 for the latest compliance examination are presumed to warrant formal enforcement action unless the regional director documents that their problems are satisfactorily corrected or in the process of full correction.

Regulators have available to them a number of informal responses to violations of law and regulation and to unsafe or unsound practices. Those actions include, but are not limited to:

- Meetings with management;
- Meetings with boards of directors (see Compliance Activities Handbook Section 135);
- Supervisory letters and directives;
- Special examinations; and
- Requests for voluntary management changes or reorganizations.

Formal enforcement actions are directed by the OTS Office of Enforcement (OE) and Regional Litigation and Enforcement Counsel, working closely with the referring regional or area office. Formal response powers include:

- Formal written "conditions" imposed in connection with the granting of applications filed with OTS;
- Supervisory agreements;
- Consent merger agreements;
- Cease-and-desist orders (C&Ds);
- Temporary C&Ds;
- Injunctive actions;
- Removal and/or prohibition orders;
- Immediate suspensions during removal and prohibition proceedings;
- Temporary suspensions for certain criminal indictments;
- Temporary suspension of insurance;
- Termination of insurance;[2]
- Civil money penalties;
- Capital directives;
- Capital plans (temporary operating restrictions);
- Individual Minimum Capital Requirement (IMCR) directives;
- Prompt Corrective Action (PCA) directives; and
- Conservatorships and receiverships.

In addition, OTS has authority to conduct formal examinations, commonly referred to as investigations (including the powers to: (1) issue subpoenas

[1] This section is substantially an adaptation of Section 370 of the Thrift Activities Handbook. Certain items have been deleted to focus more on enforcement issues arising in connection with compliance examinations.

[2] Termination of insurance of accounts is an action taken by the FDIC but may be recommended by OTS.

that are enforceable in United States District Court; and (2) take sworn testimony).

When to Use Enforcement Actions

The OTS uses its enforcement powers primarily to halt unlawful acts or practices and to require corrective action. Also, in the case of civil money penalty assessments, enforcement powers are used as a strong deterrent to violations of laws, regulations, and orders, breaches of fiduciary duty, and unsafe or unsound practices. Following are discussions of the more frequently used enforcement actions, OTS' administrative hearing process and OTS' informal action authority.

Orders to Cease and Desist

A C&D order normally requires a halt to illegal, unsafe, or unsound activities. An order may also require affirmative corrective action, including, for example, the adoption of new policies and procedures, filing special reports, rescinding prior transactions or making restitution.

The OTS has the authority to issue a C&D if it is of the opinion that one of the following factors is present: (1) an unsafe or unsound practice or (2) a violation of law, rule, regulation, any condition imposed in writing in connection with the granting of an application, or any written agreement with OTS or the Federal Deposit Insurance Corporation (FDIC). An order may also be issued if OTS has reasonable cause to believe that such a practice or violation will occur. The statutory basis for issuing C&Ds is in the Federal Deposit Insurance Act (FDIA) [12 USC § 1818(b)].

Historically, the types of practices or violations most likely to be remedied by C&Ds include failure to keep adequate books and records, deficient appraisal reports, violations of the loans-to-one-borrower regulation, transactions involving conflicts of interest and improper accounting. C&Ds may also be used in response to violations of the compliance laws and regulations. Thrift regulators are urged to use C&D authority prospectively to remedy any potentially unsafe or unsound situation that could threaten the integrity or viability of an institution.

C&Ds are issued either with the consent of the party named in the order or after the conclusion of a hearing, initiated by OTS serving a notice of charges on the institution or individual.

C&Ds can be issued against a savings association or an institution-affiliated party.[3] C&Ds may also be issued against an affiliate service corporation, savings and loan holding company or holding company subsidiary.

Violations of C&Ds

If an institution or individual fails to comply with a final order, the OTS or FDIC may seek enforcement through Federal District Court. The court's jurisdiction is limited to ordering the enforcement of and compliance with effective and outstanding orders. (An institution or an individual may challenge the merits of a C&D in an appropriate federal court of appeals.)

In addition, any savings association or individual that violates the terms of any final C&D can be ordered by OTS to pay a civil money penalty of up

[3] The term "institution-affiliated party" means:

a. Any director, officer, employee, or controlling stockholder (other than a savings and loan holding company) of, or agent for, an insured depository institution;
b. Any other person who has filed or is required to file a change-in-control notice with OTS under 12 USC § 1817(j);
c. Any shareholder (other than a savings and loan holding company), consultant, joint venture partner, or any other person as determined by OTS (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and
d. Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in:
   (A) any violation of any law or regulation;
   (B) any breach of fiduciary duty; or
   (C) any unsafe or unsound practice,
   which caused or is likely to cause more than a minimal financial loss to, or have a significant adverse effect on, the insured depository institution. [12 USC § 1813 (u)].

to $1,100,000 a day for each day the violation continues, provided that specific statutory criteria are met.

Temporary C&Ds

Temporary C&Ds are used by thrift regulators to address situations requiring immediate action. To issue a temporary order, the OTS or FDIC must also issue a notice of charges initiating a proceeding to obtain a permanent C&D. It must also determine that the violation, unsafe or unsound practice or threatened violation or practice charged in the notice is likely to: (1) cause insolvency or significant dissipation of assets; (2) weaken the institution's condition; or (3) prejudice the interests of its depositors prior to the completion of the C&D proceeding. (Certain additional determinations are necessary if the purpose of the temporary C&D is to prevent an institution-affiliated party from dissipating or otherwise disposing of assets.) A temporary C&D may order affirmative action to prevent such insolvency, dissipation, condition or prejudice pending the completion of the C&D proceedings. In addition, if OTS determines that an insured depository institution's books and records are so incomplete or inaccurate that OTS staff are unable, through the normal supervisory process, to determine the financial condition of the institution or the details of a transaction that may have a material effect on the financial condition of the institution, it can issue a temporary C&D requiring (1) the cessation of any activity or practice that gave rise to the incomplete or inaccurate books or records or (2) affirmative action to restore the books and records to a complete and accurate state, until the completion of the proceeding initiated by the notice of charges.

After a temporary C&D is issued, an institution or individual has ten days to apply to the Federal District Court to set aside, limit or suspend the order. The court is guided by traditional tests for determining whether to enjoin an agency order. Though the standard varies slightly from circuit to circuit, generally the applicant for an injunction must show the court that there is a substantial likelihood of success on the merits and that irreparable harm would flow from denial of the request for relief. The court also considers the public interest and the harm to the agency from the injunction.

If a temporary C&D is violated, OTS may apply to a district court for enforcement. If the court determines that a violation, threatened violation, or failure to obey has occurred, by law the court must enforce the order.

A temporary C&D terminates automatically when the charges in the notice initiating the proceeding for the permanent C&D are dismissed by the agency or when a permanent C&D against the same party becomes effective.

Orders of Removal and Prohibition

The purpose of orders of removal and prohibition depends upon the role of the individuals who are the subjects of the order. Officers and directors are removed from office and prohibited from further participation in the institution's affairs. Persons who participate in the affairs of an institution but hold no office, including former officers and directors, are simply prohibited from further participation.

A discussion of OTS's grounds for issuing removal and prohibition orders follows. The grounds are identical for both state- and federally chartered institutions. [Section 8(e) of the FDIA, 12 USC, § 1818(e)].

Institution-Affiliated Parties

Under Section 8(e) of the FDIA, an institution-affiliated party can be removed from office and prohibited from further participation in an institution's affairs if:

- The institution-affiliated party directly or indirectly has: (1) committed any violation of a law, regulation or final C&D; (2) violated any condition imposed in writing by the appropriate federal banking agency in connection with the grant of any application or other request by the depository institution; (3) violated any written agreement between the depository institution and the agency; (4) engaged or participated in any unsafe or unsound practice with respect to any insured depository institution or business institution; or (5) committed or engaged in any act, omission or practice that

constitutes a breach of such party's fiduciary duty;

- As a result of the violation, unsafe or unsound practice, or breach of fiduciary duty described above: (1) the insured depository institution or business institution has suffered or will probably suffer financial loss or other damage; (2) the interests of the insured depository institution's depositors have been or could be prejudiced; or (3) such party has received financial gain or other benefit from such violation, practice, or breach; and

- The violation, unsafe or unsound practice, or breach of fiduciary duty (1) involves personal dishonesty or (2) demonstrates a willful or continuing disregard for the safety or soundness of the insured depository institution or business institution.

Temporary Suspensions

An order temporarily suspending an individual from a position may be issued only in conjunction with a notice of intention to remove or prohibit, which commences a formal adjudicatory proceeding. By statute, OTS can issue a temporary suspension only if the suspension is necessary to protect the interests of the depository institution or its depositors. The suspension remains in effect pending the removal or prohibition proceeding initiated by the notice, unless it is stayed by a district court as provided by the FDIA [12 USC § 1818(f)].

The subject of the temporary suspension may apply to the District Court, within ten days of service of the suspension, for an injunction or stay of the suspension. The court will consider both the reasonableness of OTS's decision to issue the suspension and the traditional standards for injunctive relief. Because OTS will have only a short time to respond to any application for relief, it must have in hand documentation of the violation or unsound practices. This documentation should be presented to OTS for its consideration at the time of OTS enforcement counsel's request for the suspension. It may be used to demonstrate the reasonableness of OTS's action to a reviewing court. Examination reports, other materials documenting violations or personal gain to the individual, and periodic reports to OTS showing a decline in an institution's financial condition are particularly helpful. If a formal examination (see discussion below) has been conducted, excerpts from testimony implicating the respondent in illegal or unsound activities should be included in the package to OTS.

Supervisory Agreements

Supervisory agreements may address any regulatory violation or unsafe or unsound practice by an institution or institution-affiliated party. Supervisory agreements may require the cessation of any statutory or regulatory violation or unsafe or unsound practice. They may require affirmative corrective action to address any existing violations, management or operational deficiencies or other unsound practices. In short, they may include the same broad range of provisions that may be incorporated into C&D orders.

Regional directors and their designees have the authority to negotiate and execute supervisory agreements, and they should determine whether an insured institution's problems are serious enough to warrant a supervisory agreement or, instead, can be adequately addressed by a board of directors' resolution, supervisory meeting or correspondence. The decision to obtain a supervisory agreement should be based on:

- An analysis of the facts;
- The institution's supervisory history;
- The type of management involved;
- The results of a meeting with the board of directors;
- An evaluation of whether management will take appropriate corrective action;
- An assessment of the potential harm to the institution if corrective action is not effected;
- An assessment of whether a matter is so serious that it warrants more formal action than a supervisory agreement; and
- The OTS's general policy guidelines on enforcement actions (Table 1).

Under the FDIA, the OTS may initiate C&D proceedings for violations of its written agreements. To clarify that supervisory agreements are enforceable by C&D action if necessary, each one explicitly states that it is an "agreement with OTS." Violations of supervisory agreements (unlike C&Ds) do not form the basis for court enforcement. However, such violations do form the basis for the possible assessment of civil money penalties, C&D actions, and removal or prohibition actions.

Table 1

Considerations for Determining Whether Enforcement Action is Warranted

Among the factors to consider when determining whether certain illegal or unsafe or unsound conduct warrants the use of formal enforcement action or an informal supervisory response are the following:

1. The extent of actual or potential damage, harm, or loss to the thrift institution as a result of the action or inaction;
2. Whether the illegal action or unsafe or unsound practices have been repeated;
3. The likelihood that the conduct may occur again;
4. The institution's record for taking remedial or corrective action in the past;
5. The extent to which the identified problems were preventable and not solely the result of external factors;
6. The effect of the illegal or unsafe or unsound conduct on other institutions;
7. The examination rating of the institution;
8. Whether the agency's objective has been or is likely to be achieved because of action taken or contemplated by other government agencies or private litigation; and
9. The presence of unique circumstances.

When considering a supervisory agreement with a state-chartered institution, OTS regulators should consult with the state supervisor and solicit concurrence.

Civil Money Penalties

OTS possesses statutory authority under the FDIA and other statutes to assess civil money penalties against savings associations, their service corporations or subsidiaries, savings and loan holding companies and institution-affiliated parties for: (1) violations of any law or regulation; (2) violations of the terms of any final order or temporary order issued pursuant to Section 902 of FIRREA; (3) violations of any condition imposed in writing by OTS in connection with the granting of any application or other request by the association; (4) violations of any written agreement between the association and OTS; (5) breaches of fiduciary duty; and (6) unsafe or unsound practices. OTS may also assess civil money penalties for failing to maintain adequate records, for failing to file, or filing late or inaccurate OTS-required reports.

The assessment of a civil money penalty provides a strong deterrent to violations of laws, regulations and orders, as well as breaches of fiduciary duty and unsafe or unsound practices.

When assessing a civil money penalty, consideration should be given to the size of financial resources and good faith of the person, association or company being assessed, the gravity of the violation, the history of previous violations and such other matters as justice may require. OTS uses the Civil Money Penalty Form as guidance in considering and assessing civil money penalties. The form consists of a Civil Money Penalty Tier Matrix that is used to determine the tier of a violation and a Civil Money Penalty Calculation Sheet that is used to assess a penalty amount for the violation. Two tier matrices have been prepared: a General Tier Matrix and a Reporting Violation Tier Matrix. A Tier Matrix (if applicable to the violation) and Calculation Sheet should be completed before any penalty is assessed.

While these matrices are expected to be used in all cases where an assessment is being considered, they are not substitutes for sound supervisory judgment. Individual cases may possess particu-

larly egregious or mitigating characteristics that have not been included as factors in the matrices.

For more detailed information on the application of Civil Money Penalties, refer to Regulatory Bulletin (RB) 18-3a, "Enforcement Policy Statement on Civil Money Penalties," dated July 30, 1993.

Openness of Administrative Proceedings

The OTS institutes administrative proceedings pursuant to the FDIA in order to obtain enforcement orders. Federal banking agencies conduct public hearings on the record for any notice of charges issued, unless holding a public hearing would be contrary to the public interest. A transcript that includes all testimony and other documentary evidence given or submitted during these hearings must be prepared and made available to the public.

Consent Orders

Prior to the initiation of an investigation or formal examination, a regional director may, with the concurrence of the Deputy Chief Counsel for Enforcement, enter into any consent orders providing for a C&D, removal or prohibition, civil money penalty or professional disciplinary relief. In each instance, a determination shall be made whether the facts of the case warrant a demand for restitution or other affirmative corrective action. All consent orders that involve unresolved legal or policy issues, raise matters of special significance or sensitivity for the agency or involve total amounts of $100,000 or more for restitution, civil money penalties or other affirmative corrective relief shall require the prior concurrence of the Executive Director, Supervision and the Chief Counsel.

Formal Enforcement and Investigative Authority

Generally, OTS expects its examiners and supervisors to exhaust informal means of obtaining information before requesting a formal investigation. That is, regulatory staff should seek and use reliable information from savings associations and their affiliates, employees, agents, and such outside sources as borrowers, joint venturers, county land record offices and other government authorities.

When these avenues are exhausted, formal investigations can do several things including: (1) enhance regular examinations when necessary to compel uncooperative sources to produce documents or statements and (2) enhance special examinations where subpoena power is necessary to determine whether enforcement action is warranted.

OTS has broad authority to conduct examinations under HOLA and FDIA, particularly when conducting formal investigations. The OTS may take testimony under oath and issue subpoenas and subpoena *duces tecum* to any person on any matter related to the affairs or ownership of savings associations and their affiliates, and enforce such subpoenas in the United States District Courts. Generally, the courts will compel compliance with investigative subpoenas if the information sought is relevant to the inquiry or is likely to lead to the discovery of relevant information.

The results of this investigative authority (the power to issue subpoenas for documents and sworn statements) is a valuable tool for OTS in carrying out its examining, supervisory, and enforcement responsibilities.

The discussion below with respect to HOLA and FDIA investigations applies also to investigations and examinations related to a holding company and subsidiaries and affiliates thereof.

Initiation of a Formal Investigation Proceeding

A formal examination or investigation may be initiated upon the recommendation of the Deputy Chief Counsel for Enforcement and the appropriate regional director with the concurrence of the Chief Counsel and the Executive Director, Supervision. The documents supporting the request for an investigation are drafted by the legal department and should include a short summary of the facts giving rise to the investigation.

Within two weeks of initiation of the investigation, a written plan of investigation should be provided to the Chief Counsel. The plan should be developed in consultation with the regulatory staff and should identify the major investigative steps contemplated. The plan should call for the completion

of the investigation within time frames and other guidelines established by the Chief Counsel. Such time frames and guidelines are for administrative purposes only and do not affect the authority of the staff to continue to conduct such investigations or the obligation of any party to respond to subpoenas for testimony or production of documents or otherwise.

A formal investigation proceeding is an extension of the examination process, although it may not always be accompanied or immediately preceded by an examination. It enables the OTS to obtain access to information (in the form of subpoenaed documents or sworn testimony) that it has not obtained through the usual means of information gathering, e.g., the examination process and other requests by examiners and regional directors for information. An investigation is a means to obtain information that is otherwise unavailable. OTS has determined, as matter of policy, to shift the emphasis to "field" investigations, as a means of obtaining information either within or outside the association prior to considering the use of formal investigative authority.

Because of the OTS's authority to examine the records of any savings association and that association's affiliates, subpoenas are not necessary to compel the production of the records of savings associations or their affiliates. Informal requests by examiners to interview persons outside the association or to review records of a borrower or other entity that is not a savings association or an affiliate thereof often can achieve the same effect. Information may also be obtained from publicly available sources of information, such as land record offices or state corporation commissions. Sufficient information may be received in these interviews and from information requests for documents either to make an investigation unnecessary or, if still necessary, to enable the investigation to be limited in scope. Regulatory staff contemplating a request that an investigation be authorized should consider the advantages and timing of formal or informal approaches to obtaining information. The merits of each approach should be discussed with regional counsel.

The OTS's investigative powers may not be used to conduct a criminal investigation or to gather documents for the purpose of making a criminal referral. The OTS's investigative powers are civil and administrative in nature and are designed for use in carrying out the OTS's examining, supervisory, regulatory and enforcement responsibilities. However, when information obtained for an authorized civil purpose is sufficient to provide a reasonable factual basis for a belief that a crime has been or may have been committed and no Suspicious Activity Report (SAR), or an inadequate SAR, has been filed by a savings association with FinCEN, OTS personnel will appropriate FILE, using the OTS's Form 1601. In this regard, special units in each OTS regional office perform a critical function in making referrals, providing assistance to criminal investigators and prosecutors in areas within their specialized knowledge, providing a liaison between OTS and the criminal authorities, and at times serving as agents of the grand jury.

Pursuant to 5(d)(1)(B) of the HOLA as amended by FIRREA, an examiner is entitled to prompt and complete access to all association personnel and agents and to all association documents. Any refusal to supply association records or otherwise to obstruct the progress of an OTS examination should be brought to the attention of Enforcement. Section 5(d)(1)(B) grants the OTS specific authority to go to federal court to obtain an order requiring that such access be provided.

Types of Investigations

An investigation can be initiated to accomplish a number of different objectives. These objectives will guide the conduct and direction of the investigation. Some formal examinations are initiated simply to supplement an ongoing regular examination by subpoenaing records outside the control of the association being examined. The role of enforcement counsel in this type of investigation generally is to prepare the package of information needed to base a decision on whether to initiate the investigation, to draft the necessary subpoena(s), and to respond to inquiries from counsel for the recipient(s) of the subpoenas. The actual review of documents and requests for additional information needed to complete the examination is typically made by the examiners following consultation with legal staff, although on occasion the information may be reviewed by legal staff directly. The results

of these formal examinations may be incorporated into the regular examination report and, depending on their nature, may end the investigation or result in further formal enforcement inquiry or action. Requests for this type of formal examination should be made immediately after an examiner has been denied access to information that is believed necessary to properly complete the examination; such requests should not be delayed until the regular exam is completed.

Another use of an investigation is to expand the scope of an inquiry initiated during a regular examination to uncover facts needed to determine whether other formal enforcement action should be recommended or initiated. Generally this type of investigation concerns matters that, if the results of the investigation so warrant, could result in initiation of a C&D order, removal and prohibition proceeding, or a securities/control case. These investigations involve the active participation of enforcement counsel in conjunction with examinations and supervision personnel. Such investigations usually involve the issuance of subpoenas for documents and for sworn testimony. Depending on the information discovered in these investigations, formal or informal enforcement action may be initiated, a criminal referral prepared, or a conservatorship or receivership recommended. Investigations also may be conducted to prepare for administrative or civil litigation.

Interviews, Information Requests, and Subpoenas

The most common means of conducting an investigation are by interview or document request. These can be accomplished voluntarily or by compulsion through the issuance of a subpoena. While HOLA and FDIA authority is not needed to interview a witness, interviews will sometimes be conducted in preference to sworn statements under the following circumstances: (1) when it is not believed necessary to record the information sought or the witness's views of that information, (2) where the witness is cooperative, (3) when the information is of a preliminary nature or (4) when it must be collected very quickly. Conversely, sworn recorded testimony will be favored: (1) when the testimony is anticipated to be central to the investigation, (2) when it is desired that the witness be placed under oath and be bound by his or her statement or (3) when the investigator is concerned that the complexity of the information is such that it would not be fully understood unless recorded and reviewed.

Role of Regional Offices in Formal Investigations

A close working relationship between examiners and OTS legal staff is critical in investigations involving allegations of unsafe or unsound lending, investments, and operations and regulatory violations. The examiner's participation is vital both in reviewing subpoenaed documents and in identifying and pursuing areas for further inquiry. In those investigations in which examiners are to review the documents subpoenaed or attend the taking of sworn statements, it is imperative that their time be scheduled to accommodate this additional workload.

The use of investigative powers is a powerful government tool that must be used with experience, sensitivity, and care. For this reason, experienced legal staff work together with examiners and supervisory personnel in conducting investigations. If they desire, examiners and supervisory personnel experienced in formal enforcement matters may question witnesses along with attorneys during the taking of sworn statements.

When an investigation is ongoing, the OTS attorney directing the investigation shall keep supervisory staff closely informed of all events pertaining to the investigation. Similarly, the supervisory staff will consult with the assigned attorney before sending the association non-routine supervisory letters, directives, agreements, or other supervisory correspondence that could have an effect on the investigation or on possible enforcement proceedings. OTS attorneys will respond immediately to any such inquiries so that supervisory correspondence will not be unreasonably delayed.

Procedures

In most cases, requests for authority to initiate an investigation are made by the regional office where the subject association is located. Requests for investigations relating to savings and loan holding companies and changes in control of a savings association frequently come from the CASD. In addition, the Director of OTS or another OTS official

may request an investigation as a result of information coming to his/her attention from other activities of the agency. Also, Enforcement may recommend an investigation with regional office concurrence.

The timing of a request for an investigation is a function, in part, of the purpose that would initiate the investigation. An examination report need not be in final form for an investigation to be started. As described hereafter, some investigations are conducted concurrently with a regular examination, while others are initiated after the examination and supervisory processes, in an effort to determine whether formal enforcement actions are necessary. Investigative authority may also be used for other appropriate fact-finding purposes.

Recommendations for investigations may be made in a short memo to Regional Enforcement Counsel or to the Enforcement Division in Washington, D.C., containing the following information (to the extent available and known):

(1) The name, address, and docket number of the savings association(s);

(2) A brief description of facts causing the request (including reference to the provision violated, if known);

(3) A brief description of the information sought in the investigation;

(4) The purpose of the investigation (e.g., obtaining documents to complete a regular examination, obtaining sworn testimony about the relationship between an officer and a borrower, obtaining information to determine whether an enforcement action is necessary, etc.);

(5) Whether the regional director wants the regional counsel to direct or to participate in the investigation and the names and titles of the OTS employees to be representatives of the OTS in the investigation; and

(6) The primary contact person at the regional office for communications with Enforcement concerning the investigation.

This list is not exhaustive. Appropriate enforcement action should be taken in any other situation in which it is determined such action is warranted.

The Deputy Chief Counsel for Enforcement promptly will concur or disagree with the proposed investigation and advise as to whether regional counsel or OTS Enforcement will direct the proposed inquiry.

Furthermore, to facilitate the drafting and mailing of any subpoenas, examiners who are going to be involved in the investigation should, as early as possible, prepare accurate lists of persons and entities on whom they recommend subpoenas be served. They should also include the mailing addresses for those persons and entities and a brief description of what documents or sworn testimony each person or entity might provide in the investigation.

Regulatory Considerations

Selecting the Appropriate Tool

It is the policy of the OTS to fully use its statutory authorities to take prompt and vigorous enforcement action against thrift institutions, their directors, officers, agents, holding companies, service corporations or their officials where warranted to ensure the safety and soundness of such thrift institutions and the thrift industry in general. Also, as previously noted, it is OTS policy that, when the requirements of law have otherwise been satisfied, thrift institutions with a composite rating of 4 or 5 for the latest compliance examination are presumed to warrant formal enforcement action unless the regional director documents that the problems are satisfactorily corrected or in the process of full correction.

Enforcement action against open institutions should be promptly initiated regardless of examination ratings, when there is a basis to believe that:

(1) There is serious insider abuse, even if the institution is not immediately or directly harmed.

(2) The institution has failed to exercise due diligence in granting loans or making investments.

(3) The institution has committed a significant violation of statute or regulation.

(4) An institution or any individual involved has disregarded or refused to respond to prior supervisory efforts to correct serious problems.

(5) Any unsafe or unsound practice or any violation of conditions or agreements has occurred resulting in a significant risk or substantial loss.

(6) A material violation of securities laws or the Change in Control Act has occurred.

Choosing the appropriate supervisory or enforcement tool involves the careful balancing of factors and the exercise of discretion. Table 1 lists the general considerations for determining whether to use a formal enforcement action or an informal supervisory response.

Before taking or initiating formal action, it must be determined that the facts support the applicable statutory grounds for initiating the action. Allegations of misconduct that are raised in the examination, supervisory or enforcement processes must be supported with evidence of specific instances of such misconduct or evidence that would reasonably lead to the belief that such misconduct occurred or is likely to occur.

Of course, OTS will not permit the continuation of illegal, unsafe or unsound conduct that is harmful or potentially harmful to an insured institution while regulators document all details. OTS expects regulators to use supervisory responses and enforcement actions in a timely and effective manner to protect insured institutions and, ultimately, the insurance fund.

Checking for Compliance with Outstanding Agreements

The recurrence of a problem that has been addressed by an informal method of supervision, e.g., a supervisory agreement, raises a presumption that a C&D action or assessment of a civil money penalty will be pursued. That is, a material violation of a supervisory agreement should cause a regulator immediately to consider pursuing a C&D action or assessing a civil money penalty unless there are substantial mitigating factors.

Therefore, it is essential that during every examination, regulators expressly check for compliance with each outstanding agreement or order. The terms of the agreement or order should dictate the scope of the inquiry. For example, an agreement requiring an institution to develop and adopt effective, written lending procedures necessitates that the regulators review them for clarity, effectiveness and proof that the board of directors has adopted them. An agreement that the institution shall comply fully with new procedures requires a review of a sample of loans for compliance with those procedures. This review should be in addition to the normal loan review for compliance with applicable regulations and safety and soundness.

Documentation

Throughout this Handbook Section, there is mention of the documentation required for taking supervisory and enforcement action. In general, prior to any formal investigation, regulatory staff are responsible for obtaining the documentation necessary to seek supervisory or enforcement action. In the event of a violation of a final order that may have to be enforced by bringing court action, the regulator should be particularly careful to determine if the noncompliance (or other conduct) is due to the association's administrative oversight, lack of knowledge or skill or willful disregard. In all cases, regional personnel should obtain clear documentary evidence of the violations or conduct; OTS Enforcement attorneys will need that evidence in the event that OTS issues an order or if it must enforce the order in District Court. The regulator should summarize discussions with management in a written report, which should also include management's oral explanations of why such violations have occurred and the regulator's opinion as to the necessity of further enforcement action.

Termination or Modification of Enforcement Actions

Decisions to terminate or modify an enforcement action must be made in writing explaining the reasons therefor. An OTS examination documenting

compliance with the enforcement action is a prerequisite to removal of the action.

Examination Objectives

To determine if the institution and individuals are in compliance with the requirements of outstanding agreements or orders.

To determine if new or additional enforcement actions need to be taken to correct deficiencies.

Examination Procedures

1. Review any written enforcement action that addresses compliance matters that is in effect between the institution and the OTS, FDIC or state supervisory authorities, if applicable.

2. Identify what the institution or individual is required to do or is prohibited from doing by the enforcement action.

3. Evaluate any self-policing system established. That is, assess how the system has been communicated to the officers and employees and determine whether the appropriate employees are aware of any corrective action needed.

4. Review the appropriate areas of concern to determine whether or not the institution or individual is in compliance with the provisions of the enforcement action. Workpapers should fully support all conclusions.

5. If compliance is determined, summarize the findings, including comments for the report of examination (CROE) as necessary.

6. If noncompliance is found, proceed to procedure 7.

7. Discuss overall examination findings with the EIC. If a compliance composite rating of 4 or 5 is anticipated, determine what enforcement action(s), if any, is(are) necessary. Document your decision and proceed through the procedures.

8. If documents required by the enforcement action (e.g., compliance program policies) cannot be located, request them in writing from management. If you fail to receive the requested material, request a written response. If management will only respond orally, assure that two examiners are present and immediately write a summary of the response signed by both examiners.

9. Gather documents or materials that support the noncompliance (loan disclosures, loan requesters, etc.). Separate and identify all appropriate work papers, ensuring they are factual, complete and do not contain expressions of examiner opinion.

10. Assess whether noncompliance is due to the association's administrative oversight, lack of knowledge, or willful disregard. State facts, be objective and avoid speculation.

11. Formulate recommendations for any necessary supervisory action; e.g., if a previous supervisory agreement is violated, a C&D or assessment of a civil money penalty may be appropriate.

12. The EIC must notify the regional office's legal staff by telephone and report the findings, recommending any further enforcement action.

13. Per discussion with EIC or regional office staff, write an interim report detailing your findings.

14. Prepare all comments and conclusions for the CROE as necessary.

References

United States Code (12 USC)

§ 1464(d)	Subpoena Power
§ 1467a	Regulation of Holding Companies
§ 1467a(g)	Administration and Enforcement
§ 1817(j)	Change in Control of Insured Depository Institutions
§ 1818(b)	Cease-and-Desist Proceedings
§ 1818(e)	Removal and Prohibition Authority
§ 1818(i)(1)	Proceedings to Enforce Compliance
§ 1818(i)(2)	Civil Money Penalties
§ 1818(i)(4)	Prejudgment Attachment
§ 1818(n)	Subpoena Power
§ 1820(c)	Subpoena Power

Code of Federal Regulations (12 CFR)

§ 509 et seq	Adjudicatory Proceedings
§ 512 et seq	Investigative and Formal Examination Proceedings

Office of Thrift Supervision Bulletins

RB 18	Issuance of Enforcement Policies
RB 18b	General Enforcement Policy
RB 18-3a	Enforcement Policy Statement on Civil Money Penalties

Introduction

The frequency standards for scheduling compliance examinations are discussed in Section 105 of this Handbook. Following assignment of the first Compliance and CRA ratings under these procedures, the schedule for subsequent compliance examinations at each association will generally adhere to those standards. To some extent, the need for follow-up contact with the association will be satisfied by the post-examination meeting between regulatory staff and the board of directors. However, there will be instances requiring additional follow-up activity before the next examination.

Level of Follow-Up Activity

Additional follow-up activity will generally not be needed for an association earning a Compliance rating that is satisfactory or above, unless the OTS becomes aware that the association has made significant changes in its operations that would impact on its ability to maintain a strong overall compliance posture. In this case, regulatory staff should consider the need to conduct a targeted examination to review the new operations.

For an association receiving a Compliance rating of 3, 4, or 5, the level of follow-up activity will vary according to the severity of the compliance problem, the corresponding enforcement action taken, and the association's history of responsiveness to supervisory encouragement. (See Section 140)

For example, follow-up monitoring of an association receiving a Compliance rating of 3 can sometimes be carried out by an exchange of correspondence and telephone contact, especially if the association has a good record of positive responses to supervision or has already started to correct deficiencies. Lower ratings, more severe problems or management recalcitrance would generally mandate a more formal approach.

If the compliance deficiencies or the association's responsiveness are such that on-site verification of corrective action is deemed prudent, a targeted examination or other informal supervisory visitation should be scheduled. The distinction is that the targeted examination will be entered in the Compliance as an examination, and a report of that examination will be prepared and provided to the association's board of directors, whereas the less formal visitation will not be considered an examination, although it may result in a letter or other correspondence from the OTS to the board of directors.

Timing

As discussed in Section 140, an association's unwillingness to comply with an appropriate informal remedy, or the recurrence of a problem that has been addressed by that remedy, raises a presumption that a formal enforcement action will be pursued. For example, a material violation of a supervisory agreement should cause a regulator immediately to consider pursuing a cease and desist order or assessing a civil money penalty unless there are substantial mitigating factors.

It is essential that compliance with any outstanding agreements or orders that address compliance matters is reviewed during each compliance examination. The terms of the agreement or order should dictate the scope of the inquiry. For example, an agreement requiring an association to develop and adopt effective procedures in a certain area necessitates that the examiner review them for clarity and effectiveness.

The timing of a follow-up review should be dependent on several factors, including the enforcement action taken, the severity of the problems contained in the action, the extent to which management's response to the action indicates substantive correction and the timing of the next regularly scheduled examination.

For example, if an association was placed under a supervisory agreement at the prior examination to correct relatively less severe problems, the next examination is scheduled to begin within six to twelve months after the effective date of the agreement, and the association's response to the agreement indicates that corrective action has been

taken or is substantially underway, then it may be appropriate to conduct the follow-up review as a part of the next scheduled examination. Conversely, if the problems are severe or the association's response is unclear, then it may be appropriate to initiate some form of on-site review, such as a targeted examination, within three to six months after the effective date of the supervisory or enforcement action.

The timing of a follow-up review would generally not affect the timing for the subsequent regularly scheduled examination. For example, the frequency guidelines contained in Section 105 indicate that, for associations assigned a Compliance rating of 5 or a CRA rating of substantial noncompliance, a regular compliance examination should commence within six to twelve months of the completion of the regular examination that resulted in that rating. The fact that a targeted examination or other form of on-site review occurred between examinations would ordinarily not affect the timing for the next regular examination. However, if a cease and desist order or other formal enforcement action is imposed shortly after a compliance examination, the operative date for scheduling the next regular compliance examination would be the effective date of the cease and desist order or other formal action.

Other Considerations

On-site reviews and targeted examinations with supervisory objectives will normally be limited in scope to verifying the level of compliance with the terms of an order, agreement, or directive. As stated above, a targeted examination will result in the preparation of a report of compliance examination. If the on-site review is not treated as an examination, then the written product will be more informal. If the visit or targeted examination reveals continuing noncompliance, or less than satisfactory progress toward agreed-upon actions, more severe supervisory enforcement action may be necessary. Subsequent follow-up visits should be scheduled as deemed necessary to assure that corrective measures are implemented and compliance maintained by the association until the next regular compliance examination.

In addition to follow-up in response to compliance deficiencies reported at the last regular examination, regulatory staff should be alert to other circumstances indicating the need to consider a targeted or special examination prior to the next scheduled regular compliance examination. Any association that makes substantial changes to its operations that could effect its compliance position may be a candidate for a targeted examination. Substantial organizational or operational changes may be disclosed through the routine monitoring process, through the review of strategic or capital plans, or other means.

The occurrence of new, or amended, compliance laws and regulations may also trigger the need for a targeted examination if regulatory personnel suspect that an association will have difficulty achieving compliance. Finally, unanticipated events may occur that require on-site review in the form of a special examination. Instances where a special examination might be considered include when an application is protested on CRA grounds, when a discrimination complaint is received, or a Truth in Lending suit is filed. A special examination should only be scheduled following the protest of an application on CRA grounds to obtain additional information that can only be obtained on-site, or to gain a better understanding of the current activities of the association. It is anticipated that, in most cases, the information generated in the application process will provide a sufficiently clear picture of a savings association’s record of performance upon which a recommendation or decision can be made. Open communication between the association and regulatory staff is essential so that knowledge of significant events which occur between examinations is timely.